SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1968

No. [redacted]/10

WHYY, INC.,

v.

Appellant,

BOROUGH OF GLASSBORO

and

DIVISION OF TAX APPEALS OF THE DEPARTMENT OF THE TREASURY OF THE STATE OF NEW JERSEY,

Appellees.

On Appeal From the Supreme Court of New Jersey.

JURISDICTIONAL STATEMENT.

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INDEX

	Page
Opinions Below	2
Jurisdiction	2
Question Presented	3
Statutes Involved	3
Statement	4
A. Material Facts	4
B. Stage at Which Federal Question Was Raised	6
The Question Is Substantial	7
Appendix A—Opinions Below and Order Appealed From	15
Appendix B—Text of Statutes Involved	24
Appendix C—Appendix to Brief to Supreme Court of New Jersey, pp. 1A-31A	29
Appendix D—Supplemental Factual Statement	56
Appendix E—Certificates of Qualification and Exemption	79

TABLE OF CITATIONS.

Cases: Page

Allied Stores of Ohio v. Bowers, 358 U. S. 522 (1959) 8
Board of Education of Kentucky Methodist Episcopal Church v. Illinois, 203 U. S. 553 (1906) 12
Central R. R. of Pennsylvania v. Commonwealth of Pennsylvania, 370 U. S. 607 (1962) 3
Hanover Fire Insurance Co. v. Harding, 272 U. S. 494 (1926) 9
Hillsborough Township v. Cromwell, 326 U. S. 620 (1946) .. 9
Power Mfg. Co. v. Saunders, 274 U. S. 490 (1927) 9
Reserve Life Insurance Co. v. Bowers, 379 U. S. 810 (1964); 380 U. S. 258 (1965) 8, 10
Southern Ry. Co. v. Greene, 216 U. S. 400 (1910) 7, 8
Standard Oil Co. v. Peck, 342 U. S. 382 (1952) 3
Warren Trading Post Co. v. Arizona State Taxing Commission, 380 U. S. 685 (1965) 3
Wheeling Steel Corporation v. Glander, 337 U. S. 562 (1949) 7, 8, 9, 10, 13

Statutes:

New Jersey Statutes Annotated 14:15 3
New Jersey Statutes Annotated 54:4-3.6 ..... 2, 3
New Jersey Statutes Annotated 54:10A 3
15 Purdon's Pennsylvania Statutes Annotated §§ 2851-1 et seq. 4
U. S. Constitution, Amendment XIV, § 1 ..... 3, et seq.

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Appellees.

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY.

JURISDICTIONAL STATEMENT.

This is an appeal by WHYY, Inc. ("WHYY") from the judgment of the Supreme Court of New Jersey, entered on July 5, 1967, affirming the judgment of the Superior Court of New Jersey, Appellate Division, denying appellant's petition for tax exemption (App. A). Appellant submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINIONS BELOW.

The opinion of the Supreme Court of New Jersey is reported at 50 N. J. 6, 231 A. 2d 608 (1967). The opinion of the Superior Court, Appellate Division, is reported at 91 N. J. Super. 269, 219 A. 2d 893 (1966). Copies of the opinion of the Supreme Court and the opinion of the Superior Court, Appellate Division, are attached hereto as Appendix A.

JURISDICTION.

Proceedings leading to this appeal were begun by petition to the Division of Tax Appeals, in the Department of the Treasury, State of New Jersey, to set aside a denial by the Gloucester County Board of Taxation of appellant's petition for exemption of its property from personal and real property tax under New Jersey Statutes Annotated 54:4-3.6.

The judgment of the Division of Tax Appeals denied appellant's petition on November 17, 1965, and affirmed the decision of the Gloucester County Board of Taxation.

The decision of the Division of Tax Appeals was appealed to the Superior Court of New Jersey, Appellate Division, which, on May 20, 1966, affirmed the decision of the Division of Tax Appeals.

Appellant appealed to the Supreme Court of New Jersey, which, on July 5, 1967, affirmed the judgment of the Superior Court.

Appellant's Notice of Appeal to this Court was filed in the Supreme Court of New Jersey on September 19, 1967, within the statutorily prescribed period.

The question involved is the constitutionality, under the Fourteenth Amendment of the Federal Constitution, of a New Jersey statute, L. 1941, Ch. 243, p. 663, § 1, as amended, N. J. S. A. 54:4-3.6, which taxes real and per-

sonal property owned by a Pennsylvania nonprofit corporation, used exclusively for educational purposes, but does not tax identical property used for identical purposes owned by nonprofit corporations incorporated in New Jersey. The Supreme Court of New Jersey expressly rejected a direct challenge to the statute's constitutionality, based on the Fourteenth Amendment. This Court therefore clearly has jurisdiction to review that decision by direct appeal under the provisions of 28 U. S. C. § 1257(2). *Warren Trading Post Co. v. Arizona State Taxing Commission*, 380 U. S. 685 (1965); *Central R. R. of Pennsylvania v. Commonwealth of Pennsylvania*, 370 U. S. 607 (1962); *Standard Oil Co. v. Peck*, 342 U. S. 382 (1952).

QUESTION PRESENTED.

Whether the Supreme Court of New Jersey erred in upholding the constitutionality, under the Fourteenth Amendment, of a New Jersey Statute (N. J. S. A. 54:4-3.6) which taxes real and personal property owned by a Pennsylvania nonprofit corporation, used exclusively for educational purposes, but does not tax identical property used for identical purposes if owned by nonprofit corporations incorporated in New Jersey.

STATUTES INVOLVED.

New Jersey Statutes Annotated, Title 14, Chapter 15-2, 3, 4; Title 54, Chapter 4-3.6; Title 54, Chapter 10A; United States Constitution, Amendment XIV, § 1.

STATEMENT.

A. Material Facts.

This appeal involves the validity of a local tax by the Borough of Glassboro, New Jersey, on the property of appellant located within the Borough. There is no dispute concerning any of the facts. Appellant operates an educational television and radio station and is organized as a nonprofit corporation under the Pennsylvania Nonprofit Corporation Law, 15 Purd. Pa. Stat. Ann. §§ 2851-1 et seq. It broadcasts cultural, recreational and educational noncommercial radio and television programs in the Delaware Valley area, under license by the Federal Communications Commission. WHYY was admitted to "do business" in the State of New Jersey as a foreign, nonprofit corporation on July 21, 1959 (App. E., p. 80), and is also qualified in the State of Delaware (App. E., p. 79). The New Jersey Certificate states that appellant

> "has complied with all the requirements of Title 14: Chapter 15, 'Foreign Corporations' . . . and that the business of said corporation to be carried on within the State of New Jersey is such as may be lawfully carried on by corporations incorporated under the laws of this state for similar business." (App. E., p. 80).

The Federal Communications Commission authorized non-commercial television broadcasts on two channels: VHF Channel 12, allocated to Wilmington, Delaware, and UHF Channel 35, allocated to Philadelphia. The Commission also authorized non-commercial FM radio broadcasts by appellant, on Station WUHY, operating on a frequency of 90.9 mc., allocated to Philadelphia. Although all three permits are in use, the property involved in this appeal is the land, buildings and equipment used for the TV Channel 12 transmitter, all of which is located in New Jersey; consequently Channel 35 and the radio station are not involved in this proceeding.

Exhibits "A-1" and "A-1(a)" to Appendix D. indicate the coverage area for WHYY, Channel 12 (very high

frequency) as provided by the main transmitter located at Glassboro, New Jersey, and supplemented by a "translator" at Milton, Delaware. That area includes the southern half of the entire State of Delaware; Southeastern Pennsylvania; Southern New Jersey; and a small part of Maryland.

Most of WHYY's daytime programs are intended for in-school use. Such programming consists of elementary and secondary school teaching programs co-ordinated with the curricula of subscribing school districts in Pennsylvania, New Jersey and Delaware. Seven of these are located in New Jersey.

General programming on weekdays from 4:00 P. M. to 11:30 P. M., and on Sundays, is devoted to programs of a cultural, informational and educational nature. Included in the general programming are local programs intended to appeal especially to residents of New Jersey (App. D., Ex. D.).

Although precise population figures are not available, WHYY's signal reaches approximately 8,000,000 people, of whom approximately 29.5% are residents of New Jersey (App. D, p. 59).

The real estate was purchased in 1963 by WHYY, which subsequently erected thereon a television transmission station and tower. For the year 1964, tax assessments were levied by the Borough of Glassboro, New Jersey, against the real and personal property owned by WHYY and situated in the Borough. WHYY thereupon requested an exemption as an educational, nonprofit corporation. The request was denied and, on August 13, 1964, the proceedings leading to this appeal were begun.

The taxes involved are sought to be imposed upon real and personal property devoted exclusively to WHYY's Channel 12 transmissions. WHYY does not own any other property located within the State of New Jersey.

By the terms of its Articles, and the Pennsylvania Statute under which it was organized, WHYY is forbidden to engage in any activities which enure to the gain

of any private corporation or individual. It has no stockholders and can pay no dividends.

As a non-commercial, educational licensee of the Federal Communications Commission, WHYY is also barred by federal statute and FCC regulations from accepting advertising or selling time. Its funds are obtained primarily from (1) payments by school districts for programming services for use in public schools, (2) governmental agency subsidies, and (3) contributions by individuals and organizations.

The Internal Revenue Service has determined that the Corporation is an "exempt organization", organized and operated exclusively for charitable and educational purposes under Section 501(c)(3) of the Internal Revenue Code (App. E., pp. 87-90). As a consequence, WHYY is exempt from the requirement of filing income tax returns or paying income tax to the Federal Government. Contributions to WHYY are deductible as charitable contributions for Federal income tax purposes. WHYY has also been found exempt from payment of the New Jersey Business Tax as a nonprofit corporation (App. E., p. 84) and, for the same reason, is exempt from the payment of New Jersey sales tax (App. E., p. 82). WHYY has also been exempted, as a nonprofit corporation, from the payment of sales, license and property taxes by the Commonwealth of Pennsylvania and by the cities of Philadelphia, Pennsylvania and Wilmington, Delaware (App. E., pp. 83, 85, 86).

B. Stage at Which Federal Question Was Raised.

The Federal question in this case was raised in the briefs by appellant in the Superior Court, Appellate Division, after the Division of Tax Appeals held that the statutory exemption did not apply to appellant's property. On appeal to the Superior Court, appellant took the position that the statute had been incorrectly construed; but that, if the statute were construed so as to deny the benefit of exemption to appellant, on the sole

ground it was incorporated in a state other than New Jersey, the statute would be unconstitutional as a violation of the equal protection clause of the Fourteenth Amendment. This contention was rejected by the Superior Court (App. A., pp. 15-17).

The ground of appeal to the Supreme Court of New Jersey, as stated in the notice of appeal, was that the statute, as construed, created "an arbitrary and discriminatory tax classification in violation of the equal protection clause guaranteed under the provisions of the United States Constitution and the New Jersey Constitution." (App. C., p. 54). The Federal constitutional question was briefed and argued in that court, which in its opinion discussed the point and, after noting that this "constitutional question is one of great concern to many municipalities and nonprofit foreign corporations", expressly held that the statute is "not unconstitutional". (App. A., p. 22).

THE QUESTION IS SUBSTANTIAL.

The issue here involved was squarely decided in *Wheeling Steel Corporation v. Glander,* 337 U. S. 562 (1949); namely, may a state impose an ad valorem tax on property owned by an out-of state corporation, validly registered to do business in the state, while exempting identical property owned by its domestic corporations of the same class.

In *Southern Railway Co. v. Greene,* 216 U. S. 400 (1910), and many other decisions, this Court has held that a state tax which discriminates solely on the basis of the non-residence of the owner of the property being taxed, is a violation of the Equal Protection clause of the Fourteenth Amendment. Failure to note probable jurisdiction of this appeal and, ultimately, to reverse the decision of the Supreme Court of New Jersey, would represent a radical departure from these decisions. Moreover, since the dismissal of this appeal would establish the lower court's opinion as a precedent, the question is of substantial consequence, not merely to the parties to this

litigation, but to taxing authorities, industry and nonprofit corporations throughout the country.

The Supreme Court of New Jersey recognized the importance of this issue by stating,

> "As this constitutional question is one of great concern to many municipalities and nonprofit foreign corporations, the public interest in this question demands that it be decided." (App. A., p. 21).

It is therefore clear that the question is substantial and that the public interest requires decision by this Court.

This case presents, in the purest and most elementary form, the simple question whether the Federal Constitution permits a state to levy a tax on property of corporations of another state, from which domestic corporations are exempt, where the sole basis for discrimination is the state of incorporation. There is no question concerning any of the facts; there is no question concerning the nature of the tax as a property tax, as distinguished from a franchise tax; indeed there is no question concerning the nature of the question, as the opinions of the courts below have allowed no room for doubt that the tax is one which appellant would not have to pay if, instead of having been incorporated in Pennsylvania, it had chosen New Jersey as its home state.

At least since *Southern Railway Co. v. Greene,* 216 U. S. 400 (1910), it has been settled in an unbroken line of decisions by this Court that a tax which discriminates solely on the basis of the residence of the individual owner, or state of incorporation, is a violation of the Equal Protection clause of the Fourteenth Amendment; and that while a State may impose discriminatory, even prohibitive, requirements on a foreign corporation as a condition to admission within its boundaries, once the corporation has been admitted, it is entitled to treatment equal to that accorded to the state's own corporate progeny. *Reserve Life Insurance Co. v. Bowers,* 380 U. S. 258 (1965); *Allied Stores of Ohio v. Bowers,* 358 U. S. 522 (1959); *Wheeling Steel Corpora-*

tion v. Glander, 337 U. S. 562 (1949); *Power Mfg. Co. v. Saunders,* 274 U. S. 490 (1927); *Hanover Fire Insurance Co. v. Harding,* 272 U. S. 494 (1926).

With respect to individual taxpayers, Mr. Justice Douglas, speaking for a unanimous Court, said in *Hillsborough Township v. Cromwell,* 326 U. S. 620, at 623 (1946):

> "The equal protection clause of the Fourteenth Amendment protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class. The right is the right to equal treatment."

The most recent discussion of the principle as applied to corporations will be found in *Wheeling Steel Corporation v. Glander,* 337 U. S. 562 (1949). In that case, this Court considered an Ohio ad valorem tax on intangibles of foreign corporations, which exempted identical property of resident individuals and domestic corporations. The basis for attack was twofold: one, that it violated the due process clause, in that the State of Ohio lacked jurisdiction to tax such property, and second, that it denied equal protection to foreign corporations. In its effort to uphold the tax, the State did not challenge the general principle that discrimination against a corporation of another State is a violation of the equal protection clause; the State contended that this case was distinguished by a so-called "reciprocity" provision, under which the State of Ohio purported to grant to other states the right to tax the intangibles of Ohio residents who were exempted from the Ohio tax. On this point, the opinion by Mr. Justice Jackson said:

> "It is clear that this plan of 'reciprocity' is not one which by credits or otherwise protects the nonresident or foreign corporation against the discriminations apparent in the Ohio statute. We think these discriminations deny appellants equal protection of Ohio law." 337 U. S. at 574.

In view of its conclusion on the equal protection clause, the Court found it "inappropriate to decide the Due Process question." 337 U. S. at 570.

Most recently, the rule was regarded as so well settled that, in noting probable jurisdiction of an appeal from a State decision upholding such a tax, this Court ordered the case listed on the summary calendar, and reversed in a *per curiam* memorandum decision, citing the *Wheeling Steel* case: *Reserve Life Insurance Co. v. Bowers,* 379 U. S. 810 (1964); 380 U. S. 258 (1965), *reversing* 175 Ohio St. 468, 196 N. E. 2d 87 (1964).

In its opinion in this case, the New Jersey Supreme Court made no effort to discuss the applicable decisions by this Court, or to reconcile its result with their effect. Indeed, the opinion of the court below did not mention any of the relevant precedents; it preferred instead to rest its decision on the presumption that statutes are presumed constitutional, and that the legislature had a valid classification in mind. It then noted the

> "*possibilities* for treating foreign nonprofit corporations differently from domestic nonprofit corporations. It should be noted that our statute requires not only that the property be used for a specified purpose but also that the owner shall be a nonprofit corporation. The corporation laws of sister states may be less exacting than New Jersey with respect to what organizations qualify as nonprofit. If New Jersey were to grant exemptions to foreign nonprofit corporations because the state of incorporation deemed them to be nonprofit in nature, it may well be that exemptions would thereby be granted to corporations which, if formed here, would not have a tax exempt status. The Legislature could validly decide that the State should not be *burdened with the administrative problem* of checking the status of foreign corporations under foreign laws and evaluating them with our requirements." (Emphasis supplied.) (App. A, p. 22).

This appears to suggest a truly novel method of avoiding the requirements of the equal protection clause, for which counsel have discovered no judicial precedent. It must be conceded that if the record in this case may be disregarded, in favor of facts which are invented to support a preconceived theory of reasonable classification, the discrimination is legalized. The court below did not attempt to relate the "possibilities" for different treatment to the facts in the case at bar; it was content to hold merely that in view of the *possibility* such differences would be found *if* the facts *were* ascertained, the State "should not be burdened with the administrative problem . . ." of making the effort to find them.

Obviously, the argument proves too much. If the court may be freed of the necessity to consider the facts before it, and extend the scope of permissible discrimination to bounds limited only by the possibilities conjured up by its imagination, the equal protection clause has become moribund, for it is literally impossible to imagine any discrimination which could not pass such a test. No case can arise which would not be equally susceptible to the approach adopted by the court below in this case to the equal protection clause.

It has been nowhere suggested that there is in fact any significant difference in this case to justify the distinction; nor could any such suggestion be maintained in view of the undisputed facts. No such suggestion was offered by counsel for appellee at any stage of the proceedings, nor, so far as counsel for appellant is aware, by any administrative, legislative or judicial officer of the State, to the effect that appellant's activities fall short in any manner of the traditional concepts of nonprofit organizations contemplated by the statute.*

* In 1967, after the decisions by the Division of Tax Appeals and by the Superior Court, Appellate Division, rejecting appellant's claimed exemption, and while its appeal was pending in the Supreme Court of New Jersey, the New Jersey legislature enacted a statute exempting the property of nonprofit educational television stations,

The court below, *sua sponte,* asked appellant before the case was called for argument to furnish a supplemental statement of fact, to show the extent to which appellant's work conferred a benefit on the people of New Jersey, as compared to other states. That statement was furnished: (App. D.) It demonstrates, among other matters, that there is no significant difference between the benefits generated by appellant's activities for any of the four states within its service area, except insofar as such difference might be related to geographical and population factors; that as to the former, the New Jersey part of appellant's "Grade A" service area represents the larger part of the whole of such area; and that as to population, an estimated twenty-nine percent of the people within the entire service area of appellant reside within its New Jersey segment.

The request by the court for such a statement is of special interest in view of the ground for decision in *Board of Education of Kentucky Methodist Episcopal Church v. Illinois,* 203 U. S. 553 (1906), although that case was not cited in the opinion of the court below. In that case, this Court affirmed a decision by the Supreme Court of Illinois that a statutory exemption from taxation of property received by charitable organizations by bequest or devise could be restricted to Illinois corporations, in such manner as to exclude a Kentucky charity which did no work in Illinois and, in fact, was legally forbidden to expend any of its funds outside of the state of Kentucky. In an opinion by Mr. Justice McKenna, this Court emphasized that the issue centered upon the conditions which a state may impose on the right to take property by succession or inheritance, and stated that the absence of any benefit conferred on the people of Illinois by the work of the charity was a sufficient basis for denying the exemption.

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equally applicable to foreign and domestic corporations, which will exempt the property of appellant from property taxes for 1968 and thereafter: Chapter 24 of the New Jersey Laws of 1967, effective April 18, 1967.

It is, in sum, difficult to perceive the basis for any argument that the situation in this case differs from the pattern of cases such as *Wheeling Steel*. Here, as there, it may be suggested that the State of New Jersey was under no duty to admit appellant, and no obligation to establish any administrative machinery to pass upon its qualifications. It may be further suggested that when appellant submitted its articles and other documents required for qualification as a nonprofit corporation in New Jersey, the officers of that State might, under appropriate statutory or administrative criteria, find some theoretical difference in the organization of appellant to justify its exclusion as a corporation in that category. But this Court has clearly ruled that once appellant *was* admitted as a corporation in any given class, it was entitled to be taxed in the same manner as New Jersey corporations within the same class.

It is submitted that the decision by the Supreme Court of New Jersey should not be permitted to stand in the face of well-settled principles firmly established in the *Wheeling Steel* line of cases; and probable jurisdiction in this case should be noted to avoid a precedent overruling those cases.

Respectfully submitted,

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APPENDIX A.

OPINIONS BELOW.

OPINION OF SUPERIOR COURT OF NEW JERSEY.

Reported at 91 N. J. Super. 269, 219 A. 2d 893 (1966)

Submitted May 16, 1966 — Decided May 20, 1966.

Before: Judges GOLDMANN, FOLEY and COLLESTER.

MR. FRANK J. FERRY, Attorney for Appellant.

MR. JOHN W. TRIMBLE, Attorney for Respondent, Borough of Glassboro.

MR. ELIAS ABELSON, Deputy Attorney General, filed a statement in lieu of brief for respondent Division of Tax Appeals (MR. ARTHUR J. SILLS, Attorney General, Attorney).

PER CURIAM

WHYY, Inc. appeals from judgments of the Division of Tax Appeals affirming the action of the Gloucester County Tax Board in denying its application for tax exemption of property owned by it in Glassboro. WHYY is a Pennsylvania corporation whose principal office is located in Philadelphia. It was formed as a nonprofit corporation to provide cultural, recreational and educational radio and television broadcasts in the Delaware Valley area, and to establish, construct and otherwise acquire or operate noncommercial, educational radio and television broadcast

stations and facilities in Pennsylvania, New Jersey and Delaware. The company is registered in this State as a foreign nonprofit corporation, authorized to do business in New Jersey.

The Federal Communications Commission has licensed WHYY to operate and telecast over Channel 12 as a noncommercial, educational station. It has studios in Philadelphia, Pa. and Wilmington, Del. The facilities in New Jersey consist of 50 acres located in Glassboro, on which are erected a transmittal building and a 1,000-foot guy tower, the heart of its broadcasting system. WHYY is precluded from all commercial advertising. It depends on contributions from school systems and individuals to finance its operations.

The corporation appealed to the Gloucester County Tax Board from assessments levied against its property in Glassboro, claiming tax exemption as a nonprofit and educational institution. The board upheld the assessments. The Division of Tax Appeals affirmed that action upon appeal.

WHYY asserts that as a registered nonprofit foreign corporation it is authorized to own real property in New Jersey, R. S. 14:15-1; that under R. S. 14:15-2 a foreign corporation doing business here is subject to all the benefits as well as burdens of our laws, and for these reasons it is entitled to any exemption a New Jersey corporation might claim. It therefore contends that it should have been granted a tax exemption as an educational and charitable nonprofit corporation by virtue of the provisions of N. J. S. A. 54:4-3.6.

The flaw in this reasoning becomes apparent upon a reading of the statute. After listing the various categories of property entitled to tax exemption, N. J. S. A. 54:4-3.6 concludes with the following language:

> "The following exemptions shall apply only where the association, corporation or institution claiming the exemption owns the property in question *and is in-*

> *corporated or organized under the laws of this State* and authorized to carry out the purposes on account of which the exemption is claimed." (Italics ours.)

The statutory language is entirely clear. WHYY meets two of its requirements: it owns the property in question and is authorized to carry out the purposes on account of which the exemption is claimed. However, the company is not "incorporated or organized under the laws of this State." Were it not for this, it would meet the criteria of N. J. S. A. 54:4-3.6.

Statutes granting exemption from taxation are construed most strongly against the claimant, who bears the burden of proving a tax-exempt status. *Princeton University Press v. Princeton,* 35 N. J. 209, 214 (1961), and cases there cited. WHYY would avoid the very specific requirement of the quoted statute by arguing that although it is not "incorporated" under the laws of New Jersey, it is "organized" under our laws; that being fully qualified to transact business here under R. S. 14:15-2 and subject to all our laws, it should therefore be entitled to tax exemption. The words "incorporated or organized" in the closing sentence of N. J. S. A. 54:4-3.6 refer back to the beginning of that sentence and relate to "association, corporation or institution." The word "organized" refers to associations or institutions that may not be "incorporated"—it certainly does not refer to foreign corporations which are incorporated or organized in another state.

Appellant claims that a strict interpretation of the statute so as to require bona fide, foreign nonprofit corporations to incorporate in New Jersey is unreasonable and has no relation to the expressed objective of the legislation, which is to foster and encourage educational, charitable and cultural endeavors. However, as stated, statutes of exemption from taxation must be strictly construed. If the subjects of exemption are to be enlarged, it is for the Legislature to bestow that privilege, and not the courts.

Affirmed.

OPINION OF SUPREME COURT OF NEW JERSEY

A-94 September Term 1966

Reported at 50 N. J. 6, 231 A. 2d 608 (1967)

WHYY, INC.,

Petitioner-Appellant,

v.

BOROUGH OF GLASSBORO,

Respondent-Respondent,

and

DIVISION OF TAX APPEALS OF THE DEPARTMENT OF THE TREASURY OF THE STATE OF NEW JERSEY,

Respondent.

Argued May 24, 1967. Decided July 5, 1967.

On appeal from the Superior Court, Appellate Division, whose opinion is reported in 91 *N. J. Super.* 269 (1966).

Mr. Grover C. Richman, Jr. argued the cause for petitioner-appellant (*Mr. Frank J. Ferry* and *Messrs. Richman, Berry & Ferren,* attorneys).

Mr. John W. Trimble argued tthe cause for respondent-respondent.

Mr. Elias Abelson, Deputy Attorney General, filed a statement in lieu of a brief for respondent Division of Tax Appeals (*Mr. Arthur J. Sills,* Attorney General of New Jersey, attorney).

The opinion of the Court was delivered by

SCHETTINO, *J.*

This is an appeal involving property tax assessments for the year 1964.

WHYY, INC., a nonprofit Pennsylvania corporation authorized to do business in New Jersey, provides recreational and educational radio and television broadcasts in the Delaware Valley area. Its registered office in New Jersey is at 709 Market Street, Camden. The corporation's license precludes all commercial advertising. Consequently, WHYY is dependent upon contributions for its financing. Among its donors are the Board of Education of Philadelphia, the City of Philadelphia, the Tri-State Instruction Council, and others.

The facilities of the corporation in New Jersey, located in the Borough of Glassboro, consist of 50 acres of land, on which are erected a transmittal station and a tower.

WHYY did not apply for a tax exemption pursuant to the procedures set forth in *N. J. S. A.* 54:4-4.4.[1] The radio station did, however, request the Glassboro Council on November 12, 1963 for an exemption from taxes as an educational nonprofit corporation. Prior to this request, by letter dated November 7, 1963 to the Glassboro Council, WHYY forwarded a copy of the corporation's Annual Report and the corporation's charter to demonstrate its nonprofit and educational character.

The claim for exemption was denied. WHYY petitioned the Gloucester County Board of Taxation, claiming an exempt status. Again, the claim was denied. WHYY then petitioned the State Division of Tax Appeals, and the claim was there denied. An appeal was taken to the Appellate Division, which affirmed, 91 *N. J. Super.* 269 (1966),

1. "Every municipal tax assessor shall, on or before October 1, 1951, obtain from each owner of real property in his taxing district, for which a tax exemption is claimed, an initial statement under oath in such form as shall be prescribed by the Director, Division of Taxation, showing the right to the exemption claimed. Thereafter, and on or before November 1 of each year, said assessor shall obtain an initial statement, if one has not theretofore been filed."

holding that WHYY's property, although owned by a nonprofit corporation, was not exempt from New Jersey tax inasmuch as WHYY was not incorporated or organized under the laws of New Jersey as is required by *N. J. S. A.* 54:4-3.6.[2] WHYY thereafter appealed to this Court.

The fundamental approach of our statutes is that ordinarily all property shall bear its just and equal share of the public burden of taxation. As the existence of government is a necessity, taxes are demanded and received in order for government to function. Statutes granting exemption from taxation represent a departure and consequently they are most strongly construed against those claiming exemption. The burden of proving a tax-exempt status is upon the claimant. *Bloomfield v. Academy of Med. of N. J.*, 47 *N. J.* 358, 363 (1966); *Pingry Corp. v. Hillside Tp.*, 46 *N. J.* 457, 461 (1966); *Princeton Univ. Press v. Princeton*, 35 *N. J.* 209, 214 (1961).

WHYY argues (1) that if *N. J. S. A.* 54:4-3.6 discriminates against foreign corporations in granting exemptions, it is unconstitutional and is a violation of the equal protection clause of the Fourteenth Amendment; (2) that because it has qualified to transact business in New Jersey by registering with the Secretary of State, it is in effect organized under the laws of New Jersey within the meaning of *N. J. S. A.* 54:4-3.6 and, thus, is entitled to exemption; and

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2. *N. J. S. A.* 54:4-3.6 encompasses the exemption from taxation of property of certain nonprofit organizations. It reads in pertinent part as follows:

> "The foregoing exemption shall apply only where the association, corporation or institution claiming the exemption owns the property in question and is incorporated or organized under the laws of this State and authorized to carry out the purpose on account of which the exemption is claimed."

Chapter 24 of the Laws of 1967, effective April 18, 1967, supplements *N. J. S. A.* 54:4-3.6 and bears directly on tax exemptions granted to foreign and domestic nonprofit television stations. This new act is "applicable only to taxes payable in 1968 and thereafter." As the litigation here concerns taxes payable for the year 1964, this supplementary act does not apply.

(3) that it would be useless for it to go through the meaningless act of incorporating in this State.

The Borough moved to dismiss the appeal before us, urging that the constitutional issue was not raised prior to the appeal to us and, as the decision by the Appellate Division was unanimous, WHYY has no right to appeal. *R. R.* 1:7-1(c). Secondly, the Borough argues that because WHYY is a foreign corporation which did not organize under the laws of New Jersey within the meaning of *N. J. S. A.* 54:4-3.6, it is not entitled to an exemption. Finally, the Borough argues that the failure by WHYY to comply with *N. J. S. A.* 54:4-4.4 precludes the station from claiming a tax exemption.

I.

This Court may but need not accept a constitutional question not raised below. *Lattieri v. State Board of Medical Examiners,* 24 *N. J.* 199, 206 (1957). As this constitutional contention is one of great concern to many municipalities and nonprofit foreign corporations, the public interest in this question demands that it be decided. *Cf. Bd. of Ed., E. Brunswick Tp. v. Tp. Council, E. Brunswick,* 48 *N. J.* 94, 109 (1966); *State v. Perricone,* 37 *N. J.* 463, 469, *certiorari* denied 371 *U. S.* 890, 83 *S. Ct.* 189, 9 *L. Ed.* 2*d* 124 (1962).

The Legislature is given wide latitude in classifying for the purposes of taxation. That another classification might be superior or equal to the Legislature's classification is not enough to show that a statute is unconstitutional. As long as the statute may be justified on any reasonable theory, the Legislature's determination will be upheld. *General Electric Co. v. Passaic,* 28 *N. J.* 499, 506-10 (1958), appeal dismissed 359 *U. S.* 1006, 79 *S. Ct.* 1146, 3 *L. Ed.* 2*d* 987 (1959).

Moreover, there is a strong presumption that a statute is constitutional, *In re Loch Arbour,* 25 *N. J.* 258, 264-65 (1957), and a legislative act will not be declared void unless its repugnancy to the Constitution is clear beyond a reason-

able doubt. *Gangemi v. Berry,* 25 *N. J.* 1, 10 (1957). "To declare a statute unconstitutional is a judicial power to be delicately exercised." *Wilentz v. Hendrickson,* 133 *N. J. Eq.* 447, 487 (*Ch.* 1943), affirmed 135 *N. J. Eq.* 244 (*E. & A.* 1944). It is true that a classification may not be arbitrary, but the burden of proof is on him who asserts an unjust and illegal discrimination. *Wiramal v. Director of Div. of Taxation,* 36 *N. J.* 201, 210 (1961); *Harvey v. Essex County Board of Freeholders,* 30 *N. J.* 381, 388-91 (1959).

As noted above, the Legislature is given considerable latitude in determining classes for purposes of taxation. The Legislature is presumed to have a valid classification in mind. Distinctions will be presumed to rest upon a rational basis if there be any conceivable state of facts which would afford reasonable support for them. *Harvey v. Essex County Board of Freeholders, supra,* 30 *N. J.* at 388-91.

Here, there are possibilities for treating foreign nonprofit corporations differently from domestic nonprofit corporations.

It should be noted that our statute requires not only that the property be used for a specified purpose but also that the owner shall be a nonprofit organization. The corporation laws of sister states may be less exacting than New Jersey with respect to what organizations qualify as nonprofit. If New Jersey were to grant tax exemptions to foreign nonprofit corporations because the state of incorporation deemed them to be nonprofit in nature, it may well be that exemptions would thereby be granted to corporations which, if formed here, would not have a tax exempt status. The Legislature could validly decide that the State should not be burdened with the administrative problem of checking the status of foreign corporations under foreign laws and evaluating them with our requirements.

We hold that the statute is not unconstitutional.

II.

WHYY seeks to avoid the requirement of *N. J. S. A.* 54:4-3.6, that to be entitled to an exemption a nonprofit corporation must be "incorporated or organized under the laws of this State." WHYY argues that although it is not incorporated under the laws of New Jersey, it is "organized" under our laws because it qualified to transact business here by registering with the Secretary of State. It, therefore, should be entitled to an exemption.

We agree with the Appellate Division interpretation of *N. J. S. A.* 54:4-3.6. The word "incorporated" refers back to nonprofit associations, whereas the word "organized" refers back to nonprofit associations and institutions which may not be "incorporated." Certainly, the word "organized" does not refer to foreign corporations which qualify and register but which are not incorporated in this State. See Appellate Division's opinion, 91 *N. J. Super.* 272.

III.

As WHYY is not entitled to a tax exemption under *N. J. S. A.* 54:4-3.6, it is not necessary for us to determine whether the failure by WHYY to comply with *N. J. S. A.* 54:4-4.4 (notifying the tax assessor before November 1 of a claim to an exemption) should preclude the station from asserting an exempt status.

Affirmed; no costs.

SUPREME COURT OF NEW JERSEY

WHYY, Inc., *Petitioner-Appellant,*	Appeal Docket No. 5287
v.	
Borough of Glassboro, *Respondent-Respondent,*	Civil Action On Appeal
and	
Division of Tax Appeals, *Respondent.*	Mandate on Affirmance

This cause having been duly argued before this Court by Mr. Grover C. Richman, Jr., counsel for the appellant and Mr. John W. Trimble and Mr. Elias Abelson, counsel for the respondent, and the Court having considered the same,

It is hereupon ordered and adjudged that the judgment of the said Superior Court, Appellate Division is affirmed; and it is further ordered that this mandate shall issue ten days hereafter, unless an application for rehearing shall have been granted or is pending, or unless otherwise ordered by this Court, and that the record be remitted to the Superior Court, Appellate Division to be there proceeded with in accordance with the rules and practice relating to that court, consistent with the opinion of this Court.

WITNESS the Honorable JOSEPH WEINTRAUB, Chief Justice, at Trenton on the 5th day of July, 1967.

JOHN H. GILDEN,
Clerk of the Supreme Court.

A True Copy

JOHN H. GILDEN
Clerk

Filed

Jul 5 1967

JOHN H. GILDEN
Clerk

APPENDIX B.

TEXT OF STATUTES.

NEW JERSEY STATUTES ANNOTATED.
TITLE 14, CHAPTER 15-2.

14:15-2. Foreign Corporations Subject to Title.

A foreign corporation doing business in this state shall be subject to the provisions of this title, so far as the same can be applied to foreign corporations.

14:15-3. Copy of Charter and Statement to Be Filed; Certificate of Authority to Do Business.

Every foreign corporation, except banking, insurance, ferry and railroad corporations, transacting any business in this state, shall file in the office of the secretary of state a copy of its charter or certificate of incorporation, attested by its president and secretary, under its corporate seal, and a statement attested in like manner setting forth:

a. The amount of its authorized capital stock and the amount actually issued;

b. The character of the business which it is to transact in this state; and

c. The principal office of the corporation in this state and the name and place of abode of an agent upon whom process against such corporation may be served, which agent shall be a domestic corporation or a natural person of full age actually resident in this state, and the agency shall continue until the substitution, by writing, of another agent.

Thereupon the secretary of state shall issue to the corporation a certificate that it is authorized to transact

business in this state, and that the business is such as may be lawfully transacted by corporations of this state, and he shall keep a record of all such certificates issued.

14:15-4. Certificate of Authority to Do Business Prerequisite to Suits on Contracts.

Until such corporation so transacting business in this state shall have obtained such certificate of the secretary of state, it shall not maintain any action in this state upon any contract made by it in this state.

NEW JERSEY STATUTES—TITLE 54, CHAPTER 3.6. EXEMPTIONS FROM TAXATION.

54:4-3.6. Exemption of Property of Nonprofit Organizations

The following property shall be exempt from taxation under this chapter: All buildings actually used for colleges, schools, academies or seminaries; all buildings actually used for historical societies, associations or exhibitions, when owned by the State, county or any political subdivision thereof; all buildings actually and exclusively used for public libraries, religious worship or asylum or schools for feeble-minded or idiotic persons and children; all buildings used exclusively by any association or corporation formed for the purpose and actually engaged in the work of preventing cruelty to animals; all buildings actually and exclusively used and owned by volunteer first-aid squads, which squads are or shall be incorporated as associations not for pecuniary profit; all buildings actually and exclusively used in the work of associations and corporations organized exclusively for the moral and mental improvement of men, women and children, or for religious, charitable or hospital purposes, or for one or more such purposes; all buildings owned or held by an association or corporation created for the purpose of holding the title to such buildings as are actually and exclusively used in

the work of 2 or more associations or corporations organized exclusively for the moral and mental improvement of men, women and children; all buildings owned by a corporation created under or otherwise subject to the provisions of Title 15 of the Revised Statutes and actually and exclusively used in the work of one or more associations or corporations organized exclusively for charitable or religious purposes, which associations or corporations may or may not pay rent for the use of the premises or the portions of the premises used by them; the building actually occupied as a parsonage by the officiating clergymen of any religious corporation of this State, to an amount not exceeding $5,000.00; the land whereon any of the buildings hereinbefore mentioned are erected, and which may be necessary for the fair enjoyment thereof, and which is devoted to the purposes above mentioned and to no other purpose and does not exceed 5 acres in extent; the furniture and personal property in said buildings if used in and devoted to the purposes above mentioned; all property owned and used by any non-profit corporation in connection with its curriculum, work, care, treatment and study of feeble-minded, mentally retarded, or idiotic men, women, or children shall also be exempt from taxation, provided that such corporation conducts and maintains research or professional training facilities for the care and training of feeble-minded, mentally retarded, or idiotic men, women, or children; provided, in case of all the foregoing, the buildings, or the lands on which they stand, or the associations, corporations or institutions using and occupying them as aforesaid, are not conducted for profit, except that the exemption of the buildings and lands used for charitable, benevolent or religious purposes shall extend to cases where the charitable, benevolent or religious work therein carried on is supported partly by fees and charges received from or on behalf of beneficiaries using or occupying the buildings; provided, the building is wholly controlled by and the entire income therefrom is used for said

charitable, benevolent or religious purposes. The foregoing exemptions shall apply only where the association, corporation or institution claiming the exemption owns the property in question and is incorporated or organized under the laws of this State and authorized to carry out the purposes on account of which the exemption is claimed. As amended L.1941, c. 243, p. 663, § 1; L.1949, c. 85, p. 394, § 1; L.1960, c. 119, p. —, § 1.

UNITED STATES CONSTITUTION.

AMENDMENT XIV.—CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens

shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President, and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

APPENDIX C.

PETITION TO THE GLOUCESTER COUNTY BOARD OF TAXATION.

Your Petitioner, WHYY, Inc., a non-profit corporation, residing at (P. O. address) South Delsea Drive, Glassboro, New Jersey, respectfully shows, that it is the owner of a certain property situate in the taxing district of Borough of Glassboro, County of Gloucester, consisting of land and personal property necessary to operate an educational television station. Known as Map 29C, Block 427, Lot 18D, Stanger Avenue.

That said property has been assessed for the purpose of taxation for the year 1964 at a valuation of Land: $2,050; Bldg.: $30,225; Per.: $81,150 dollars at which assessment your petitioner is aggrieved, because the said assessment is in excess of its true value. Your petitioner therefore prays that the said assessment of $113,425.00 dollars for the year be reduced to the true value of the property, to wit: Petitioner claims a tax exemption as a non-profit and educational institution.

Date August 13, 1964.

(WHYY, Inc., a non-profit corporation)

(Signed) Irvin C. Ruby.

STATE OF NEW JERSEY }
COUNTY OF ATLANTIC } *ss.:*

Irvin C. Ruby, the above-named petitioner, being duly sworn according to law, on his oath says that he has read the above petition and knows the contents thereof, and that the statements set forth and contained therein are true to the best of his knowledge and belief; and that a true copy of the above petition has been served on the City Clerk of the taxing district in which the assessed property is situate.

IRVIN C. RUBY.

Sworn and subscribed before me this 30th day of June, 1965.

DOROTHY F. DE MES.
My Comm. Exp. March 30, 1970.

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(1) Where city property is the subject of appeal, care should be taken to describe the lot, block and street number, so that the same may correspond with the tax collector's books.

(2) County Board of Taxation cannot reduce valuations fixed by assessors for the purposes of equalizing assessments.

(3) The filing of an appeal does not relieve the petitioner from the payment of taxes when due.

(4) Copy of this petition must be served on the Assessor and Clerk or Attorney of the taxing district, as indicated above.

FRANK J. FERRY,
1 South New York Avenue,
Atlantic City, New Jersey.
Attorney at Law.

PETITION TO THE GLOUCESTER COUNTY BOARD OF TAXATION.

Your Petitioner, WHYY, Inc., a non-profit corporation, residing at (P. O. address) South Delsea Drive, Glassboro, New Jersey, respectfully shows, that it is the owner of a certain property situate in the taxing district of Borough of Glassboro, County of Gloucester, consisting of land necessary to operate an educational television station. Known as Map 29C; Block 427, Lot 29, Stanger Avenue.

That said property has been assessed for the purpose of taxation for the year 1964 at a valuation of $375.00 dollars at which assessment your petitioner is aggrieved, because the said assessment is in excess of its true value. Your petitioner therefore prays that the said assessment of $375.00 dollars for the year 1964 be reduced to the true value of the property, to wit: Petitioner claims a tax exemption as a non-profit and educational institution.

Date August 13, 1964.

(WHYY, Inc., a non-profit corporation)

(Signed) Irvin C. Ruby.

STATE OF NEW JERSEY }
COUNTY OF ATLANTIC } *ss.:*

Irvin C. Ruby, the above-named petitioner, being duly sworn according to law, on his oath says that he has read the above petition and knows the contents thereof, and that the statements set forth and contained therein are true to the best of his knowledge and belief; and that a true copy of the above petition has been served on the City Clerk of the taxing district in which the assessed property is situate.

IRVIN C. RUBY.

Sworn and subscribed before me this 30th day of June, 1965.

DOROTHY F. DE MES.
My Comm. Exp. March 30, 1970.

---

(1) Where city property is the subject of appeal, care should be taken to describe the lot, block and street number, so that the same may correspond with the tax collector's books.

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(3) The filing of an appeal does not relieve the petitioner from the payment of taxes when due.

(4) Copy of this petition must be served on the Assessor and Clerk or Attorney of the taxing district, as indicated above.

FRANK J. FERRY,
1 South New York Avenue,
Atlantic City, New Jersey,
Attorney at Law.

JUDGMENT

OF

GLOUCESTER COUNTY BOARD OF TAXATION.

Woodbury, N. J., October 27, 1964.

FRANK J. FERRY, Esq. (for WHYY Inc.) Suite 503, Schwehm Bldg., Atlantic City, New Jersey.

The Gloucester County Board of Taxation, sitting as a Board of Appeals, considered your Petition of Appeal for a reduction of the assessed valuation on property located in the Taxing District of Borough of Glassboro, County of Gloucester and State of New Jersey, on the 8th day of October, 1964.

After having made diligent inquiry and hearing the evidence presented, relative to the value of said property, it has been Adjudged, Decreed and Ordered by the said County Board of Taxation that your Petition of Appeal for a reduction in valuation be denied and the valuation as assessed be the same, on Map 29-C, Block 427, Lot 18-D, Map 29-C, Block 427, Lot 29, be denied and the assessment to be the same.

Very truly yours,

GLOUCESTER COUNTY BOARD OF TAXATION,

VERA A. LUTZ, *Secretary.*

(Seal)

PETITION TO THE DIVISION OF TAX APPEALS, IN THE DEPARTMENT OF THE TREASURY.

Your Petitioner, WHYY a nonprofit corporation residing at (P. O. address) South Delsea Drive, Glassboro, New Jersey in the County of Gloucester and State of New Jersey, respectfully shows that it is the owner of certain property situated in the taxing district of Borough of Glassboro, County of Gloucester consisting of Real Estate |X|, Personalty |X|, Land and equipment necessary to operate a non-profit educational television station and known as Block: 427, Lot: 18D, St. or Ave: Strange Avenue.

That said property has been assessed for the purpose of taxation for the year 1964 at a valuation of:

Land:	$ 2,050.00
Improvements:	$ 30,225.00
Personalty:	$ 81,150.00
Total	$113,425.00

at which assessment your petitioner is aggrieved, because the said assessment is in excess of its true value. Petitioner claims a tax exemption pursuant to N. J. S. A. 54:4-3.6.

That an appeal from said assessment has been filed with the Gloucester County Board of Taxation, which appeal said Board disposed of as follows:

	Land:	$ 2,050.00
	Improvements:	$ 30,225.00
County Board Action:	Personalty:	$ 81,150.00
	Total	$113,425.00

Your petitioner, therefore, prays that said assessment of **Land, $2,050.00, Impt., $30,225.00; Pers., $81,150.00; Total, $113,425.00, for the year 1964, be considered as tax exempt pursuant to N. J. S. A. 54:4-3.6.
Dated November 30, 1964.

(Signed) IRVIN C. RUBY, *Agent.*

*This amount should be the original valuation of the property, as it appears on the tax bill.
**This amount should be the valuation to which the assessment was changed by the County Board of Taxation, on appeal.
***Please indicate which item or items you are appealing.
****List any other reasons upon which claim for reduction is based.
X List any other relief sought.

Complete information must be given as set forth on the reverse side of this petition.

PETITION TO THE DIVISION OF TAX APPEALS, IN THE DEPARTMENT OF THE TREASURY.

Your petitioner, WHYY, a non-profit corporation residing at (P. O. address) South Delsea Drive, Glassboro, New Jersey in the County of Gloucester and State of New Jersey, respectfully shows that it is the owner of certain property situated in the taxing district of Borough of Glassboro, County of Gloucester consisting of Real Estate |X|, Personalty |X|, Land and equipment necessary to operate a non-profit educational television station and known as Block: 427, Lot: 29, St. or Ave.: Strange Avenue.

That said property has been assessed for the purpose of taxation for the year 1964 at a valuation of:

*Land:	$	375.00
Improvements:	$	
Personalty:	$	
Total	$	375.00

at which assessment your petitioner is aggrieved, because the said assessment is in excess of its true value. Petitioner claims a tax exemption pursuant to N. J. S. A. 54:4-3.6.

That an appeal from said assessment has been filed with the Gloucester County Board of Taxation, which appeal said Board disposed of as follows:

	Land:	$	375.00
	Improvements:	$	
County Board	Personalty:	$	
Action:	Total	$	375.00

Your petitioner, therefore, prays that said assessment of **Land, $375.00 Impt., $; Pers., $; Total, $, for the year 1964, be considered as tax exempt pursuant to N. J. S. A. 54:4-3.6.

Dated November 30, 1964.

(Signed) Irvin C. Ruby, *Agent.*

*This amount should be the original valuation of the property, as it appears on the tax bill.

**This amount should be the valuation to which the assessment was changed by the County Board of Taxation, on appeal.

***Please indicate which item or items you are appealing.

****List any other reasons upon which claim for reduction is based.

X List any other relief sought.

Complete information must be given as set forth on the reverse side of this petition.

EXHIBIT "A".

AFFIDAVIT.

STATE OF NEW JERSEY }
COUNTY OF ATLANTIC } *ss.:*

I, IRVIN C. RUBY, being of full age, duly sworn according to law upon my oath, depose and say:

1. I am the Director of Business Affairs and assistant to the General Manager of WHYY, INC., and, in the course of my duties, I am responsible for the general management and the over-all fiscal operation of this television broadcasting station. In this capacity, I am required to report to the Board of Directors and submit periodic financial statements, regarding the operation of this station.

2. WHYY, INC., was originally incorporated in the State of Pennsylvania, and was formed as a non-profit corporation to provide cultural, recreational, and educational radio and television broadcasts within Pennsylvania, New Jersey, and Delaware, which area has eight million (8,000,000) potential views and listeners. WHYY, INC., is registered in the State of New Jersey, as a foreign, non-

profit corporation, with a registered office at the New Jersey Corporation Guarantee and Trust Company, located at 709 Market Street, Camden, New Jersey.

3. The Board of Directors of this corporation consists of five (5) school directors, four (4) institutional directors, and thirteen (13) community leaders, on which the State of New Jersey is represented by: Mrs. Ruth Mancuso, who is associated with the New Jersey State Educational System, and resides at 411 Swarthmore Road, Glassboro, New Jersey; Dr. Anthony R. Catrambone, Superintendent of the Camden City School System; and Dr. Granville H. Thomas, Superintendent of the Salem City School System.

4. Pursuant to a revenue ruling of the United States Government, Internal Revenue Service, this corporation has been declared exempt from Federal Income Taxes, as it has been shown to the Government that the corporation was organized exclusively for charitable and education purposes. In addition, the Board of Revision of Taxes, in the City of Philadelphia, has declared the office building and facilities, at 5448 Market Street, Philadelphia, to be exempt from real estate taxes. The City of Wilmington has also exempted this corporation from paying the city license fee, due to the corporation's non-profit activities. The Department of Revenue of the Commonwealth of Pennsylvania has also granted to this corporation the authority to purchase tangible personal property tax free, under the applicable provisions, pertaining to non-profit corporations. (See Exhibit "A" for documentation.)

5. WHYY, Inc., has registered with the Secretary of State of New Jersey, and has filed its annual report with that office, which makes the corporation subject to the laws of the State of New Jersey, and entitled to all the rights and privileges of a duly licensed corporation of this state.

6. The corporation has been licensed by the Federal Communications Commission to operate Channel 12 as a

non-commercial, educational station. This precludes any possibility of taking commercial advertising on the station itself and, thus, eliminates any material gain. This makes us dependent upon school systems and voluntary contributions to operate the station. This station is in existence because of contributions made by the Board of Education of the City of Philadelphia, totaling FIVE HUNDRED THOUSAND DOLLARS ($500,000.00), per year, and the contributions of the City of Philadelphia, of TWO HUNDRED AND FIFTY THOUSAND DOLLARS ($250,000.00), per year. In addition, we receive approximately ONE HUNDRED THOUSAND DOLLARS ($100,000.00) from the Tri-State Instructional Council who, together with the Board of Education of Philadelphia, coordinates the classroom instruction that is aired on this station.

7. The instructors, who act as professors on the programs, are furnished principally by the Board of Education of the City of Philadelphia; but, in specialized cases, such as the French Department, the instructors are furnished by the Tri-State Instructional Council. Their services are free to the corporation, their salaries having been absorbed by the school systems involved.

8. A full statement of programming offered by the station is incorporated in our brochure attached hereto, as Exhibit "A"; but, more closely associated with the State of New Jersey, we have broadcast "Profiles of New Jersey", which is a weekly report by Governor Hughes, of New Jersey. During the past two years, we have broadcast several agricultural programs from Rutgers University and, also, programs from Glassboro State College, both of which associations we intend to encourage by continued participation in our educational programming.

9. In addition to the educational programming offered, there are available numerous cultural programs, which consist of some of the following types of broadcasts: Performances from the Academy of Music, in Philadelphia; ballet and modern dance recitals; many full length operas,

such as Dido and Aenas, La Traviata, Otella, and Tosca; as well as the popular world of drama—every major dramatist from Shakespeare to Samuel Becket has been seen on WHYY-TV. We also broadcast the controversial show, produced by David Suskin, entitled "Open End".

10. Our facilities in New Jersey consist of fifty acres of ground, in the Borough of Glassboro, on which we have erected a transmittal building and a one thousand foot guide tower, which are the heart of our entire broadcasting system.

11. On November 7, 1963, we were represented by Alvin E. Granite, Esquire, who submitted a letter to the Council, requesting an exemption on our behalf, pursuant to R. S. 54:4-3.6; a copy of this letter is attached hereto as Exhibit "B". On November 12, 1963, the Glassboro Council brought this before the entire government body; and it was referred to their then Borough Attorney, Alvin Shpeen, Esquire, for study, which report of said meeting appeared in the Woodbury Daily Times, on November 13, 1963 (copy of which is attached hereto as Exhibit "C"). In view of this situation, we were under the impression that the necessary administration procedures had been followed to properly request a tax exemption from the Borough of Glassboro.

12. This Affidavit is made to induce the Division of Taxation to grant a tax exemption to Station W. H. Y. Y., Inc., pursuant to N. J. S. A. 54:4-3.6.

Irvin C. Ruby,
Irvin C. Ruby.

Subscribed and sworn to before me this 18th day of June, 1965.

Edith C. R. Plasket,
Notary Public of the State of
New Jersey.

(Seal)

My commission expires 6/25/66.

EXHIBIT "B".

WOODBURY DAILY TIMES
Established 1897

Woodbury, N. J., Wednesday, November 13, 1963

WHYY REQUESTS GLASSBORO FOR TAX EXEMPTION

Glassboro Council last night received a request from Attorney Alvin Granite on behalf of Station WHYY (Channel 12) for exemption from further taxes since it is an educational, non-profit corporation.

The station maintains a transmitter and building on a 26-acre site in Glassboro. The matter was referred to Borough Attorney Alvin Shpeen for study.

Council approved an application for a billiard license by Garden Lanes Bowling Center on S. Delsea Dr. The new center will hold its grand opening at 3 P. M. this Saturday. Ed Gress is general manager.

Wilbur Burt of Ellis Mill Rd. was appointed superintendent of the highway department effective November 16, to replace William Carey, who recently resigned.

Permission was granted to the management of the Little

(Continued to Page 16, Col. 8)

WHYY REQUESTS

(Continued from Page One)

League baseball team to hold a circus on the Glassboro Theater grounds, on or about April 28.

Bids for a water line on Academy St. will be received at a special meeting on December 2 at 8 P. M.

Council approved the installation of vapor lights at Oakview Ave. and Church St., near the new St. Bridget's R. C. Church.

A letter received from Norman R. Evans, electrical contractor from Pitman, calling council's attention to the electrical contractors' licensing act of 1962, was referred to Arthur Glass, chairman of the fire, light and welfare committee.

Borough Hall will be closed at 3:30 P. M. on November 31 so employees may attend the N. J. League of Municipalities convention at Atlantic City.

EXHIBIT "C".

November 7, 1963

Mayor and Borough Council
Municipal Building
Glassboro, New Jersey

Gentlemen:

Kindly be advised that I represent Station WHYY, which recently purchased a tract of land within the confines of the Borough of Glassboro, and has erected thereon a TV tower and a building, or buildings. The purpose of this letter is to request that you adopt a Resolution exempting these premises from taxation in accordance with R. S. 54:4-3.6.

WHYY, Inc. is a corporation of the Commonwealth of Pennsylvania, authorized to do business in the State of New Jersey, and is formed as a non-profit, educational corporation.

I am enclosing herewith, in support of this request, a copy of the Annual Report of the corporation filed with the Secretary of State of New Jersey, together with a copy of the Charter, both of which constitute proof of its existence as a non-profit educational corporation.

It is my understanding that the taxes have been paid on the premises for the year 1963 so that our request should be in regard to any added assessment for this year and for future years.

If you have any questions, please do not hesitate to contact me. I would appreciate it if you would inform me when the Resolution has been adopted.

Very truly yours,

ALVIN E. GRANITE.

AEG:s
cc—Alvin G. Shpeen, Esq., Solicitor

OPINION OF ANTHONY H. LARIO, PRESIDENT OF DIVISION OF TAX APPEALS.

Appearances:

FRANK J. FERRY, Esquire, on behalf of Petitioner.
MARTIN F. CAULFIELD, Esquire, on behalf of Respondent.

LARIO, President.

Petitioner appeals from a judgment of the Gloucester County Board of Taxation which denied petitioners' application for a tax exemption on premises owned by it and situated within the Borough of Glassboro.

Petitioner is a corporation of the Commonwealth of Pennsylvania with its principal office located at Philadelphia, Pennsylvania. It was formed as a non-profit corporation to provide cultural, recreational, and educational radio and television broadcasts in the Delaware Valley area.

It has been licensed by the Federal Communications Commission to operate a television station to telecast over Channel 12 as a non-commercial educational station.

Petitioner has registered with the State of New Jersey as a Foreign Non-Profit Corporation.

In connection therewith, it operates its studios in Philadelphia, Pennsylvania and Wilmington, Delaware, and owns a transmitting station, the premises under appeal. The land was purchased for $30,000 and equipment for all three locations was purchased at a price of $403,225.85.

Petitioner has been declared tax exempt by the U. S. Internal Revenue Service and the Commonwealth of Pennsylvania.

Petitioner objects that the County Board should have allowed its request for tax exempt status under the provisions of N. J. S. A. 54:4-3.6. No objection has been raised to the valuation of the assessment.

Petitioner and Respondent have submitted stipulations of fact, which have been marked in evidence as Exhibit A, which consists of an affidavit by Irving C. Ruby, Director of Business Affairs, and Assistant to the General Manager of WHYY, Inc., and a brochure, marked Exhibit B, which sets forth the photostatic copy of the Corporation and its by-laws, and other information concerning its tax exempt status, and its programming.

Respondent denies that the Petitioner comes within the provisions of the foresaid statute, and in addition sets up the defense that Petitioner has failed to make timely application for tax exemption for the tax year 1964, by reason of its failure to comply with the provisions of N. J. S. A. 54:4-44. As of November 1, 1963, Petitioner had failed to file a claim for tax exemption with the Borough for the tax year 1964.

N. J. S. A. 54:4-3.6 provides for the exemption of property for educational, religious and charitable organizations. The last sentence of the statute reads as follows:

> "The foregoing exemptions shall apply only where the association, corporation or institution claiming the exemption owns the property in question and is incorporated or organized under the laws of this State and authorized to carry out the purposes on account of which the exemption is claimed."

In response thereto Petitioner claims although it is incorporated under the laws of Commonwealth of Pennsylvania, that since it has registered as a foreign Corporation with the State of New Jersey, it qualifies for the exemption claimed.

In construing the statute in question, the taxpayer alleges that since under N. J. S. A. 14:15-1 it is permitted to purchase and convey real estate; and since, under N. J. S. A. 14:15-2, as a foreign corporation doing business in this state, it is subject to the laws of this state, therefore, it should be also entitled to any exemptions that a New Jersey corporation would be entitled to receive.

Statutes granting exemption from taxation are strictly construed against anyone claiming exemption thereunder. *Princeton Tp., Mercer County v. Tenacre Foundation,* 69 N. J. Super. 559 (1961).

The burden of proving tax-exempt status is upon claimant. *Princeton U. Press v. Borough of Princeton,* 35 N. J. 209 (1961).

This judicial attitude is but a facet of the rule of construction that all doubts are resolved against those seeking the benefit of a statutory exemption which in turn is based upon the fundamental principle of equality of the taxation burden. *Township of Teaneck v. Lutheran Bible Institute,* 20 N. J. 86 (1955).

In *Township of New Providence v. Lions Club of Plainfield,* 17 A. 2d 548, 19 N. J. Misc. 103 (1941), where a ques-

tion arose as to who actually held title, this Division held, "If, on the other hand the Boy Scouts of America is the exemption claimant, the claim is fatally defective for the reason that the organization was incorporated, not under the laws of this State, as required by the statute, but under the statutes enacted by Congress for the formation of corporations in the District of Columbia."

The statute in question is clear and unambiguous as regards the situs of the corporation claiming the exemption. It clearly establishes that the claimant must be "incorporated or organized under the laws of this State".

The use of the word "organized" relates solely to the recognition by the Legislature that certain associations may not be actually incorporated but may be "organized" under the laws of the State of New Jersey and entitled to tax exemption.

The statute cannot be construed to include within the meaning of "organized", a foreign corporation authorized to do business in this state. If the subjects of exemption are to be enlarged, it is for the Legislature to bestow the privilege. *Twp. of Teaneck v. Lutheran Bible Institute, supra.*

Since petitioner is not incorporated under the laws of the State of New Jersey, its claim for exemption is denied.

JUDGMENT.

A duly verified appeal in writing having been filed with the Division of Tax Appeals, by WHYY, Inc., in which it is alleged that an injustice has been done the said complainant by the assessment of certain property for taxation for the year 1964, located at Borough of Glassboro in the County of Gloucester, consisting of Land, building and personalty known as (land and equipment necessary to operate a non-profit educational Television Station) Blk. 427, Lot 18D, Strange Ave., and that said property is assessed higher than the true value thereof;

After hearing evidence produced on the part of said complainant, and the said respondent, and the argument of Frank J. Ferry, Atty. for the complainant, and Martin F. Caulfield, Atty. for the respondent, and after considering the same, it is on this 17th day of November, nineteen hundred and sixty-five, at a session of the Division of Tax Appeals, ORDERED, ADJUDGED and DECREED, under and by virtue of the authority conferred by law, that the action of the County Board of Taxation in denying the exemption on the assessment of $113,425, being $2,050 on land, $30,225 on improvements and $81,150 on personalty levied for the year 1964 on the above described property be affirmed and the appeal therefrom dismissed.

JUDGMENT.

A duly verified appeal in writing having been filed with the Division of Tax Appeals, by W. H. Y. Y., Inc., in which it is alleged that an injustice has been done the said complainant by the assessment of certain property for taxation for the year 1964, located at Borough of Glassboro in the County of Gloucester, consisting of Land and known as Block 427, Lot 29, Strange Ave., and that said property is assessed higher than the true value thereof;

After hearing evidence produced on the part of said complainant, and the said respondent, and the argument of Frank J. Ferry, Atty. for the complainant, and Martin F. Caulfield, Atty. for the respondent; and after considering the same, it is on this 17th day of November, nineteen hundred and sixty-five, at a session of the Division of Tax Appeals, ORDERED, ADJUDGED and DECREED, under and by virtue of the authority conferred by law; that the action of the County Board of Taxation in denying the exemption on the assessment of $375. on land levied for the year 1964 on the above described property be affirmed and the appeal therefrom dismissed.

NOTICE OF APPEAL.

NOTICE is hereby given that WHYY, INC., petitioner-appellant, appeals to the Superior Court of New Jersey, Appellate Division, from the final judgment entered by the Division of Tax Appeals, Department of the Treasury of the State of New Jersey, rendered on the 17th day of November, 1965, under docket numbers 2249D, and 2250D, for properties designated as Block 427, Lot 18D, and Block 427, Lot 29, affirming the Gloucester County Board of Taxation, in denying the petitioner-appellant's claim for a tax exemption for said properties.

FRANK J. FERRY,
Attorney for Petitioner-Appellant.

AFFIDAVIT.

STATE OF NEW JERSEY }
COUNTY OF ATLANTIC } *ss.:*

SUSAN T. BOAZ, being duly sworn according to law upon her oath deposes and says:

1. I am a secretary in the law offices of FRANK J. FERRY, Esquire, located at 1 South New York Avenue, Atlantic City, New Jersey; said FRANK J. FERRY, Esquire, is the attorney for the petitioner-appellant in the captioned matter.

2. Pursuant to instructions from FRANK J. FERRY, Esquire, I did serve a copy of a Notice of Appeal to the Superior Court of New Jersey, Appellate Division, from the Judgment of the Division of Tax Appeals, of November 17, 1965, under docket numbers 2249D, and 2250D, by mail-

ing the same, certified mail, return receipt requested, by depositing same in a United States mail depository, located at New York and Atlantic Avenues, Atlantic City, New Jersey, on December 10, 1965, with postage prepaid thereon, to the following persons and agencies:

(a) Thomas F. Carlin, Secretary
Department of the Treasury
Division of Tax Appeals
State House Annex
Trenton, New Jersey

(b) Arthur J. Sills, Esquire
Attorney General of New Jersey
State House
Trenton, New Jersey

(c) Vera A. Lutz
Gloucester County Board of Taxation
Woodbury City Hall
Woodbury, New Jersey

(d) Thomas Giunta, Secretary
Glassboro Board of Assessors
Glassboro City Hall
Glassboro, New Jersey

(e) Martin F. Caulfield, Esquire
Solicitor for the Borough of Glassboro
Law Offices
49 Delaware Street
Woodbury, New Jersey

SUSAN T. BOAZ.

Sworn and subscribed to before me this 18th day of December, 1965.

/s/ EMMA B. KUEHNLE,
A Notary Public of the State of New Jersey.

OPINION OF SUPERIOR COURT OF NEW JERSEY.

Reported at 91 N. J. Super. 269, 219 A. 2d 893 (1966)

Submitted May 16, 1966—Decided May 20, 1966.

Before: Judges Goldmann, Foley and Collester.

Mr. Frank J. Ferry, Attorney for Appellant.

Mr. John W. Trimble, Attorney for Respondent, Borough of Glassboro.

Mr. Elias Abelson, Deputy Attorney General, filed a statement in lieu of brief for respondent Division of Tax Appeals (Mr. Arthur J. Sills, Attorney General, Attorney).

Per Curiam

WHYY, Inc. appeals from judgments of the Division of Tax Appeals affirming the action of the Gloucester County Tax Board in denying its application for tax exemption of property owned by it in Glassboro. WHYY is a Pennsylvania corporation whose principal office is located in Philadelphia. It was formed as a nonprofit corporation to provide cultural, recreational and educational radio and television broadcasts in the Delaware Valley area, and to establish, construct and otherwise acquire or operate noncommercial, educational radio and television broadcast stations and facilities in Pennsylvania, New Jersey and Delaware. The company is registered in this State as a foreign nonprofit corporation, authorized to do business in New Jersey.

The Federal Communications Commission has licensed WHYY to operate and telecast over Channel 12 as a noncommercial, educational station. It has studios in Philadelphia, Pa. and Wilmington, Del. The facilities in New Jersey consist of 50 acres located in Glassboro, on which are erected a transmittal building and a 1,000-foot guy tower, the heart of its broadcasting system. WHYY is precluded from all commercial advertising. It depends on contributions from school systems and individuals to finance its operations.

The corporation appealed to the Gloucester County Tax Board from assessments levied against its property in Glassboro, claiming tax exemption as a nonprofit and educational institution. The board upheld the assessments. The Division of Tax Appeals affirmed that action upon appeal.

WHYY asserts that as a registered nonprofit foreign corporation it is authorized to own real property in New Jersey, R. S. 14:15-1; that under R. S. 14:15-2 a foreign corporation doing business here is subject to all the benefits as well as burdens of our laws, and for these reasons it is entitled to any exemption a New Jersey corporation might claim. It therefore contends that it should have been granted a tax exemption as an educational and charitable nonprofit corporation by virtue of the provisions of N. J. S. A. 54:4-3.6.

The flaw in this reasoning becomes apparent upon a reading of the statute. After listing the various categories of property entitled to tax exemption, N. J. S. A. 54:4-3.6 concludes with the following language:

> "The following exemptions shall apply only where the association, corporation or institution claiming the exemption owns the property in question *and is incorporated or organized under the laws of this State* and authorized to carry out the purposes on account of which the exemption is claimed." (Italics ours.)

The statutory language is entirely clear. WHYY meets two of its requirements: it owns the property in question and is authorized to carry out the purposes on account of which the exemption is claimed. However, the company is not "incorporated or organized under the laws of this State." Were it not for this, it would meet the criteria of N. J. S. A. 54:4-3.6.

Statutes granting exemption from taxation are construed most strongly against the claimant, who bears the burden of proving a tax-exempt status. *Princeton University Press v. Princeton,* 35 N. J. 209, 214 (1961), and cases there cited. WHYY would avoid the very specific requirement of the quoted statute by arguing that although it is not "incorporated" under the laws of New Jersey, it is "organized" under our laws; that being fully qualified to transact business here under R. S. 14:15-2 and subject to all our laws, it should therefore be entitled to tax exemption. The words "incorporated or organized" in the closing sentence of N. J. S. A. 54:4-3.6 refer back to the beginning of that sentence and relate to "association, corporation or institution." The word "organized" refers to associations or institutions that may not be "incorporated"—it certainly does not refer to foreign corporations which are incorporated or organized in another state.

Appellant claims that a strict interpretation of the statute so as to require bona fide, foreign nonprofit corporations to incorporate in New Jersey is unreasonable and has no relation to the expressed objective of the legislation, which is to foster and encourage educational, charitable and cultural endeavors. However, as stated, statutes of exemption from taxation must be strictly construed. If the subjects of exemption are to be enlarged, it is for the Legislature to bestow that privilege, and not the courts.

Affirmed.

MANDATE ON AFFIRMANCE.

This cause having been duly submitted to this Court by Frank J. Ferry, counsel for the appellant and John W. Trimble, counsel for respondent, Boro. of Glassboro and Elias Abelson, filed a statement in lieu of brief for Division of Tax Appeals, and the Court having considered the same,

It is hereupon ordered and adjudged that the determination of the said Division of Tax Appeals, Department of the Treasury, State of New Jersey, is affirmed with costs; and it is further ordered that this mandate shall issue ten days hereafter, unless an application for rehearing shall have been granted or is pending, or unless a Notice of Appeal to the Supreme Court or a Notice of Petition for Certification has been filed or is pending, or unless otherwise ordered by this Court, and that the cause be remanded to the Division of Tax Appeals of the Department of the Treasury, State of New Jersey, to be there proceeded with in accordance with the rules and practice relating to that agency, consistent with the opinion of this Court.

WITNESS the Senior Judge of the Part, Superior Court of New Jersey, Appellate Division, at Trenton on the 20th day of May, 1966.

MORTIMER G. NEWMAN, JR.,
Clerk of the Superior Court.

I hereby certify that the foregoing is a true copy of the original on file in my office.

MORTIMER G. NEWMAN, JR.,
Clerk.

NOTICE OF APPEAL.

NOTICE is hereby given that WHYY, INC., petitioner-appellant, appeals to the Supreme Court of New Jersey, pursuant to Rule 1:2-1(a), from the final judgment entered in the Superior Court of New Jersey, Appellate Division, on May 20, 1966, in favor of the respondent, affirming the determination of the Division of Tax Appeals, Department of the Treasury of the State of New Jersey, since petitioner-appellant has been denied a tax exemption under N. J. S. A. 54:4-3.6 and such determination is an arbitrary and discriminatory tax classification in violation of the equal protection clause guaranteed under the provisions of the United States Constitution and the New Jersey Constitution.

FRANK J. FERRY,
Attorney for Petitioner-Appellant.

I hereby certify that no stenographic record was taken below and that the matter was submitted to the Superior Court, Appellate Division, on an agreed statement of facts.

FRANK J. FERRY,
Attorney for Petitioner-Respondent.

AFFIDAVIT OF MAILING.

I, Susan T. Boaz, of full age, being duly sworn according to law upon my oath depose and say:

1. I am a secretary in the law offices of Frank J. Ferry, located at 1 South New York Avenue, Atlantic City, New Jersey.

2. Frank J. Ferry is the attorney for the petitioner-appellant in the above matter and the individual actually entrusted with the conduct of this appeal.

3. Pursuant to instructions from Frank J. Ferry, I did serve a copy of the attached Notice of Appeal to the Supreme Court of New Jersey from the final judgment entered in the Superior Court of New Jersey, Appellate Division, on May 20, 1966, in favor of the respondent, by mailing the same by certified mail, return receipt requested, and by depositing same in a United States mail depository located at New York and Atlantic Avenues on June 28, 1966, with postage pre-paid thereon, addressed to the following individuals and agencies:

(1) John W. Trimble, Esquire
Law Offices
617 Haddon Avenue
Collingswood, New Jersey, Cert. #957535

(2) Arthur J. Sills, Attorney General
c/o Elias Abelson
Deputy Attorney General
Department of Law & Public Safety
State House Annex
Trenton, New Jersey, Cert. #957537

(3) Edward B. Dooley, Secretary
Division of Tax Appeals
Department of the Treasury
State House
Trenton, New Jersey, Cert. #957536

SUSAN T. BOAZ.

Subscribed and Sworn to Before me this 28th day of June, 1966.

DOROTHY F. DEMEO,
A Notary Public of the State of New Jersey.
My Commission Expires March 30, 1970.

(Seal)

APPENDIX D.

SUPREME COURT OF NEW JERSEY

DOCKET NO. A-5287

WHYY, INC.,
Petitioner-Appellant

v.

BOROUGH OF GLASSBORO,
Respondent-Appellee,

and

DIVISION OF TAX APPEALS OF THE DEPARTMENT OF THE TREASURY OF THE STATE OF NEW JERSEY,
Respondent.

Supplementary Factual Statement of the Nature and Extent of the Charitable Educational Benefits, Bestowed Within the Borders of New Jersey by WHYY, Inc. Television and Radio Broadcasts.

GROVER C. RICHMAN, JR.,
RICHMAN, BERRY & FERREN,
1207 Wilson Building,
Camden, New Jersey,
FRANK J. FERRY,
503 Schwehm Building,
Atlantic City, New Jersey.
Attorney for Petitioner-Appellant.

SUPREME COURT OF NEW JERSEY

DOCKET No. A-5287

WHYY, INC.,

Petitioner-Appellant

v.

BOROUGH OF GLASSBORO,

Respondent-Appellee,

and

DIVISION OF TAX APPEALS OF THE DEPARTMENT OF THE TREASURY OF THE STATE OF NEW JERSEY,

Respondent.

SUPPLEMENTARY FACTUAL STATEMENT OF THE NATURE AND EXTENT OF THE CHARITABLE EDUCATIONAL BENEFITS, BESTOWED WITHIN THE BORDERS OF NEW JERSEY BY WHYY, INC. TELEVISION AND RADIO BROADCASTS.

WHYY, Inc. (the "Corporation") is licensed by the Federal Communications Commission (the "Commission") to engage in non-commercial television and radio broadcasting of educational programs. Non-commercial educational licenses are authorized under regulations adopted by the Commission acting under provisions of the Communications Act of 1934, 47 U. S. C. §§ 301 et seq.

Such broadcasting covers certain areas for each of the respective licenses. Exhibit "A-1" and "A-1(a)" show the coverage area for WHYY, Channel 12 (very high frequency) as provided by the main transmitter located at Glassboro, New Jersey, and supplemented by a "translator" at Milton, Delaware; so that the combined effect of the transmitter and "translator" is to provide complete

coverage for the entire State of Delaware, as well as the remaining area shown on Exhibit "A-1". Exhibit "A-2" shows the coverage area of WUHY-TV, Channel 35 (ultra high frequency) and Exhibit "A-3" shows the coverage area for WUHY radio (FM 90.9 mc.).

The inner circles shown on Exhibits "A-1", "A-2" and "A-3" indicate the so-called "Grade A" coverage area; the outer circles show the limits of the "Grade B" coverage area. In general, and in non-technical terms, the term "Grade A" coverage area means the area in which an excellent picture or signal can be received under normal conditions.

The dates on which operations were begun under the respective licenses are as follows:

WUHY Radio	December 14, 1954
WUHY-TV, Channel 35	September 12, 1963
WHYY-TV, Channel 12	September 12, 1863

Although all of the radio and television broadcasting activities by the Corporation are intended to make a substantial and significant contribution to the educational, cultural and intellectual life in the area respectively served, by far the largest part of its audience consists of viewers of Channel 12 programs, which are sent out from the transmitter located at Glassboro, New Jersey. The taxes involved in this litigation are sought to be imposed upon real and personal property devoted exclusively to Channel 12 transmission. The Corporation does not own any other property located within the State of New Jersey.

The coverage area for Channel 12 (Exhibit "A-1"), like the coverage areas for Channel 35 and the radio station, is prescribed and bounded by the terms of the Commission license. Although Channel 12 is assigned by the Commission to Wilmington, Delaware, and although its programs mostly originate in Wilmington or Philadelphia studios, they are actually broadcast from the Glassboro transmitter. The location of that transmitter, together

with the power of the signal, determine the area reached by the broadcasting; the coverage area is not physically affected or influenced by the place where the programs originate. As Exhibit "A-1" shows, the Glassboro transmitter is located at the center of the Channel 12 coverage area. The Glassboro site was prescribed by the Commission, and the transmitter may not be relocated without its permission.

The Commission licenses are granted and renewed for three-year periods. In 1966, the Channel 12 license was renewed by the Commission "without comment"—i.e., without adverse criticism or cautionary remarks.

Any account of the overall significance of the work of the Corporation, as it relates to the State of New Jersey, must consist primarily of a description of the general activities of the Corporation. Since those activities are concentrated on broadcasting of television and radio programs within its service area, those activities confer a benefit on the segment of New Jersey included within that service area in the same manner as on the entire area covered by the broadcasts.

The portion of the Channel 12 "Grade A" service area lying within the boundaries of the State of New Jersey, from a geographical standpoint, represents the largest part of the entire "Grade A" service area. Although precise population figures are not available, the Corporation estimates the total population within reach of its Channel 12 signal is about 8,000,000, which is estimated to be distributed within the various state segments as follows:

New Jersey	29.5%
Pennsylvania	61.5%
Delaware	7.5%
Maryland	1.5%

Legal Status and Summary of Organization.

The Corporation was granted Articles of Incorporation by the Court of Common Pleas of Philadelphia County No. 3, December Term, 1952, No. 8216, under the provisions of

the Pennsylvania Non-Profit Corporation Law, 15 Purd. Pa. Stat. Ann. §§ 2851-1 et seq. It has qualified as a non-profit corporation in New Jersey.

By the terms of its Articles, and the statute under which it was organized, the Corporation is not permitted to engage in any activities which enure to the profit or gain of any private corporation or individual. It has no stockholders and can pay no dividends. The Internal Revenue Service has determined that the Corporation is an "exempt organization", organized and operated exclusively for charitable and educational purposes under Section 501-(c)(3) of the Internal Revenue Code. As a consequence of that ruling, the Corporation is exempt from the requirement of filing income tax returns or paying income tax to the Federal Government. Contributions to the Corporation are deductible as charitable contributions for Federal income tax purposes. The larger part of its real and personal property is located at its offices and studios in Philadelphia, and no taxes have been collected, or sought to be collected, on any of its property in Pennsylvania, either by State or local authorities. Except for trifling sums, which the Corporation regards as de minimis, no taxes have been collected or sought to be collected by any state or local authorities in Delaware.

The Corporation is governed by a Board of Directors, currently twenty-seven in number. A list of the current Directors is attached as Exhibit "B". The Directors receive no pay for their services, and are chosen from prominent citizens whose business or professional activities are centered upon various communities within those parts of Pennsylvania, New Jersey and Delaware included within the service area of the Corporation. It employs approximately one hundred persons.

Sources of Funds.

As a non-commercial educational licensee of the Commission, the Corporation is prohibited by Federal statute and regulations from accepting advertising or selling time.

Its operating and capital funds, and property, are derived from the following principal sources:

1. *Contract payments* by various school districts and public school agencies, which contribute to the cost of providing broadcast facilities for instructional programs viewed in classrooms, for elementary, junior high and high school students. Some of the funds from these sources are also used to finance certain supplementary instructional activities, such as adult education and teacher education programs (see summary of programs below).

2. *Public subsidies* by state, county and local government agencies.

3. *Contributions* by charitable foundations, business corporations, and civic associations.

4. *Contributions* by the viewing public.

5. *Gifts of real and personal property* by public and private donors, for use by the Corporation in carrying on its acivities.

6. *Programs* contributed for showing, or subsidized, by various public and private agencies.

The sources of WHYY's total receipts for capital and operating expenses for 1966 may be classified as follows:

Payments by school agencies to defray the costs of instructional broadcasts	$ 530,000.00
Contributions by the viewing public	230,000.00
Contributions by foundations	63,000.00
Contributions by business and industry	40,000.00
Grants by municipal government	265,000.00
Grants by state government	140,000.00
Reimbursement of costs for special projects	135,000.00
Other	37,000.00
TOTAL	$1,440,000.00

In addition to funds from the above sources, in 1966 the Corporation received substantial sums from the Ford Foundation under a matching grant program; and has also received payments from the Federal Government, disbursed through the Department of Health, Education and Welfare, under the Educational Television Facilities Act of 1962, 47 U. S. C. §§ 390 et seq., on account of a total grant which will total $652,390.00.

The operating and capital budget for 1967 is approximately $1,800,000.00.

Programs.

WHYY'S programs come within two general categories:

1. "In-School" and related teaching programs, shown from about 9:00 A. M. to approximately 4:00 P. M. each weekday, plus some evening and Saturday programs devoted to adult and teacher instruction.

2. "General" programming on weekday and Sunday afternoons and evenings.*

The "in-school" phase consists of elementary and secondary systematic teaching programs, the contents (or curriculum) of which are planned by the School District of Philadelphia and the Tri-State Instructional Broadcasting Council, a non-profit organization composed of educators and representatives of school districts in Pennsylvania, New Jersey and Delaware. The programs are actually prepared and presented by school teachers employed and paid by the various participating school districts and agencies. The curricula are designed to fit prescribed courses presented by the subscribing school districts. Teacher training programs are also developed for broadcasting by the Council, particularly in the language arts, science and mathematics, areas in which teacher training programs are

* At present, the Corporation does not offer any general Saturday programs; it hopes to expand its broadcast schedule to cover all normal viewing hours when it is financially able to do so.

deemed particularly beneficial because of rapid changes in teaching methods and aids.

This instructional programming is broadcast to participating schools and school districts in the Tri-State area for in-class instruction. The participating schools and school districts pay a yearly fee of $1.00 per student served. It should be noted, however, that since WHYY broadcasts on a standard VHF channel, the "in-school" programs are available to non-subscribers as well as subscribers. Parents of participating students may also view the programs on sets at their homes.

a. *New Jersey Participation*—during the school year 1966-67, seven New Jersey school districts,* or agencies, representing approximately 23,900 children, participated in WHYY's "in-school" programming. Three additional districts, Willingboro, Cape May City and Stratford, have contracted to participate during school year 1967-68. Negotiations are currently underway with one other, the Hammontown School District. Discussions have also been held in recent months between the Tri-State Council and the New Jersey State Department of Education concerning development of a plan to provide "in-school" programming for all eight New Jersey Counties within the WHYY broadcast area.**

At present, Dr. Anthony R. Catrambone, Superintendent of Schools, Camden, New Jersey, and The Honorable

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* (1) Camden City Public Schools
(2) Camden City Parochial Schools
(3) Greenbank School, Washington Township Board of Education
(4) Bridgeton Elementary Schools
(5) Greenwich Township Schools
(6) Wenonah Borough Public Schools
(7) Divine Word Seminary

** Camden, Gloucester, Cumberland, Salem, Mercer, Atlantic, Cape May and Burlington.

Arthur J. Sills, Attorney General of the State of New Jersey, are members of the Board of Directors of WHYY, Inc.; John T. Dorrance, Jr., Chairman of the Board of Campbell Soup Company, is also a member.

Arthur Burnham, Superintendent of Schools, Greenwich Township, Gibbstown, New Jersey, and Dr. Granville Thomas, Superintendent of Schools, Salem, New Jersey, are members of the Board of Directors of the Tri-State Council. Dr. Thomas has been a member of the Tri-State Board since its inception and has also served on the Board of WHYY, Inc.

"General" Programming.

WHYY's general programming, which is broadcast weekdays from 5:00 P. M. to 11:30 P. M., is devoted to programs of a cultural, informational and educational nature.

The prime source of this programming is the National Educational Network (NET), a non-profit corporation engaged in the production and distribution of live, film and video tape cultural and educational programs. As a contract affiliate of NET, WHYY, Inc. receives five hours per week of original programming as well as access to NET's extensive film and video tape library. Through this affiliation, WHYY is able to present informative and timely programs dealing with such economic, social and political programs as the "war" on proverty, the United Nations, the John Birch Society, a study of the work of the 89th Congress and medical care for the aged. In the cultural field, WHYY broadcasts opera, symphony, modern dance and drama. In the educational or informational area, programs deal with such subjects as astronomy, viruses, and French cooking.

Other programming sources are the Eastern Educational Network (EEN), independent producers and, occasionally, commercial producers whose programs are shown without advertising.

An important and growing source of programming is local production by WHYY of programs of importance or

interest to the Tri-State area. Opera performances from the Philadelphia Academy of Music, live performances of the Moorestown, New Jersey Theatre and the Wilmington opera, and discussions of major issues by political, civic and educational leaders of the Tri-State area are examples of WHYY's local programming. In addition, WHYY devotes two and one-half hours per day to in-depth Tri-State news coverage, often reporting subjects of local interest passed over by the commercial stations. Sample press clippings from various local newspapers in New Jersey are attached (Exhibit "C") as evidence of the widespread interest shown in the programs carried by Channel 12.

Because WHYY is not compelled to choose its programs because of commercial considerations, it is able to show certain programs which deal with local and state problems, politics and affairs. Examples of those focusing on matters of particular interest to New Jersey residents are:

Profile of New Jersey, broadcast September 18, 1964 to March 12, 1965, twenty-four programs, thirty minutes each;

Science and Argiculture, produced in cooperation with Rutgers University, broadcast September 16, 1963 to June 1, 1964, thirty-five programs, thirty minutes each.

So You Want To Go To College, produced in cooperation with Glassboro State College, broadcast Fall, 1963, Spring, 1964, January and February, 1966, each series consisting of eight thirty minute programs.

New Jersey Chamber of Commerce Annual Washington Day Dinner, broadcast February 5, 1967, two hours.

New Jersey Chamber of Commerce Annual Washington Day Dinner, broadcast February 5, 1967, two hours.

The New Jersey Bond Issue, broadcast September 16, 1963 and September 23, 1963.

Metro Spect, Paul Ylvisaker, A Profile, interview with the newly designated Commissioner for the Department of Community Affairs for New Jersey, to be broadcast June 1, 1967.

A complete list of New Jersey oriented programs is attached as Exhibit "D".

A complete schedule of all of the Tri-State instructional programs will be found on page 22 of "The Broader View" for May, 1967 (Exhibit "E"), a program periodical booklet distributed by the Corporation to the public. It also contains a summary of general evening and Sunday program highlights (pages 20, 21), and a complete schedule of daily radio programs (pages 9-16).

The Carnegie Commission on Educational Television has recently made an intensive study of the history and present status of the 120 or more stations which provide the local outlets for the national system of non-commercial educational television. The Report of the Carnegie Commission was recently published under the title "Public Television: A Program for Action"; a copy is attached as Exhibit "F". A capsule summary of the findings and recommendations of the Commission will be found on pages 3 to 11 of the Report.

The discussion and findings contained in the Report are generally applicable to the Corporation, and should be extremely helpful in any overall appraisal of the public service provided by the Corporation to the communities included within its service area.

Throughout the Report, the Carnegie Commission manifests deep concern over the most crucial problem faced by stations which, like Channel 12, are not operated as part of, or subsidized by, some larger parent institution. That problem is the problem of how such stations can obtain the financial means to enable them to survive and prosper. While the Commission's recommendations as to the best

method of providing such financing have aroused considerable discussion and controversy, the following conclusion, expressed in the introductory note facing the fly-leaf of the Report, has received universal approval and may be regarded as non-controversial:

> "The Carnegie Commission on Educational Television has reached the unqualified conclusion that a well-financed, well-directed educational television system, substantially larger and far more pervasive and effective than that which now exists in the United States, must be brought into being if the full needs of the American public are to be served. This is the central conclusion of the Commission and all of its recommendations are designed accordingly. The firm base upon which educational television is founded, and the potentiality it possesses to serve the general welfare, warrant the investment of public funds and public energies; the public interest in its expansion is unmistakable . . ."

COUNTY OF PHILADELPHIA
COMMONWEALTH OF PENNSYLVANIA } *ss:*

WARREN KRAETZER, being duly sworn according to law, deposes and says that he is the Executive Vice-President and General Manager of WHYY, Inc.; that he is authorized to and does make this statement on behalf of said Corporation; and that the facts set forth herein are true and correct to the best of his knowledge, information and belief.

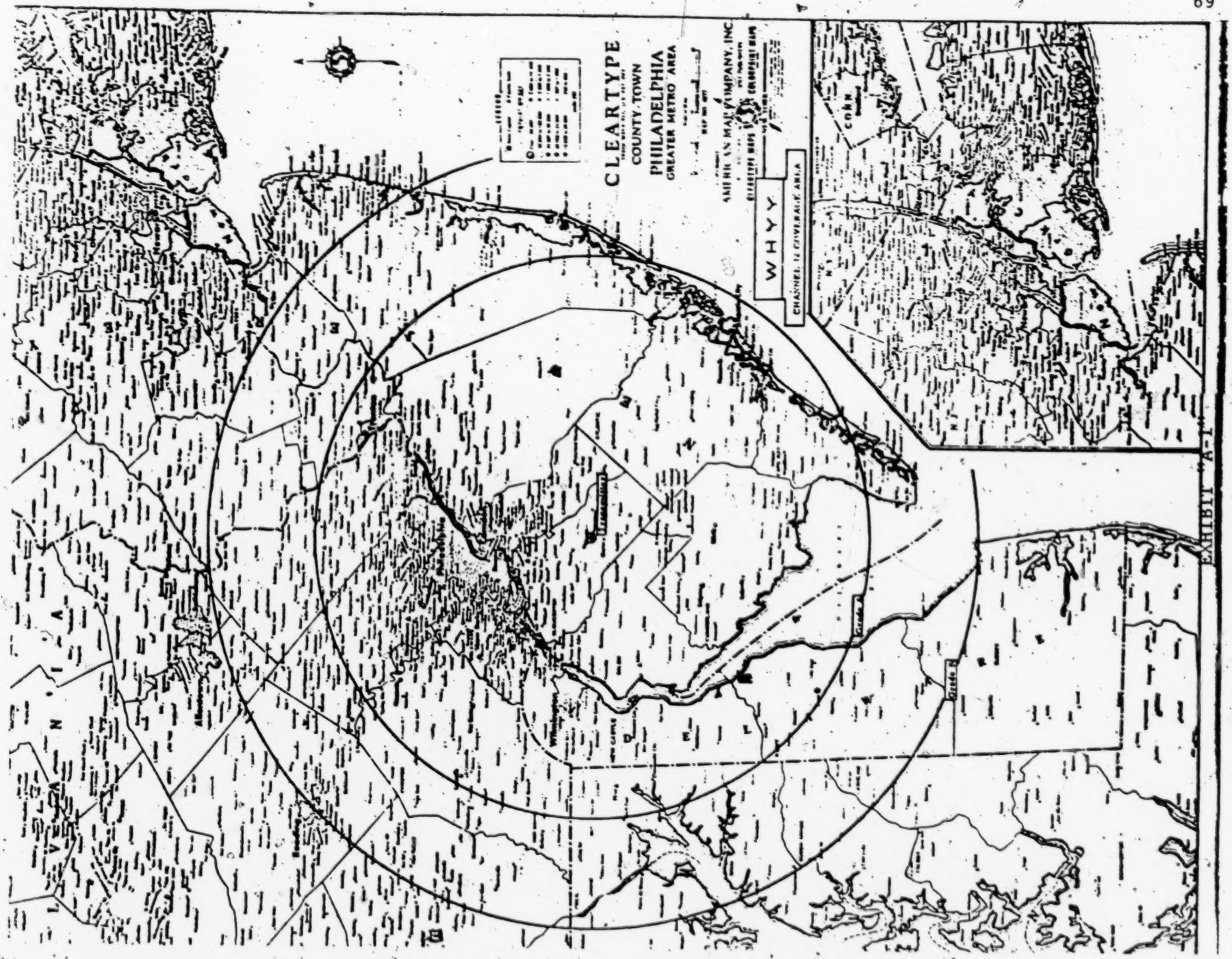
WARREN A. KRAETZER,
Warren Kraetzer.

Sworn to and subscribed before me this 18th day of May, 1967.

LEWIS P. MARX,
Notary Public.

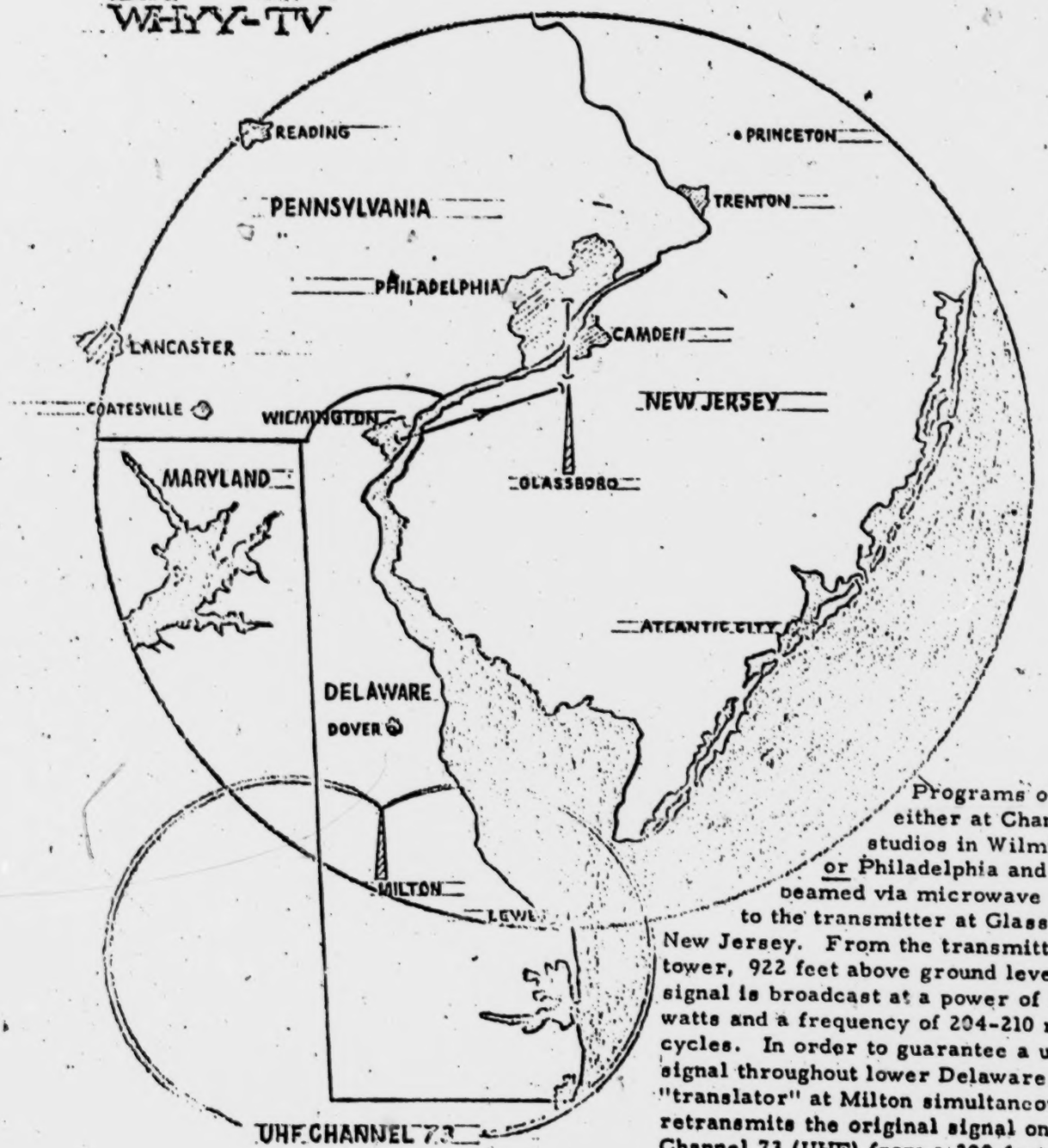
(Seal)

LEWIS P. MARX,
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires February 23, 1970.


CLEARTYPE
COUNTY-TOWN
PHILADELPHIA
GREATER METRO AREA
WHYY
CHANNEL 12 GRADE A COVERAGE AREA
EXHIBIT A-1

CHANNEL 12 WHYY-TV

OPERATIONS & COVERAGE MAP



Programs originate either at Channel 12 studios in Wilmington or Philadelphia and are beamed via microwave relay to the transmitter at Glassboro, New Jersey. From the transmitter tower, 922 feet above ground level, the signal is broadcast at a power of 316,000 watts and a frequency of 204-210 megacycles. In order to guarantee a usable signal throughout lower Delaware, a "translator" at Milton simultaneously retransmits the original signal on Channel 73 (UHF) from a 300 foot tower.

EXHIBIT "A-1(a)"

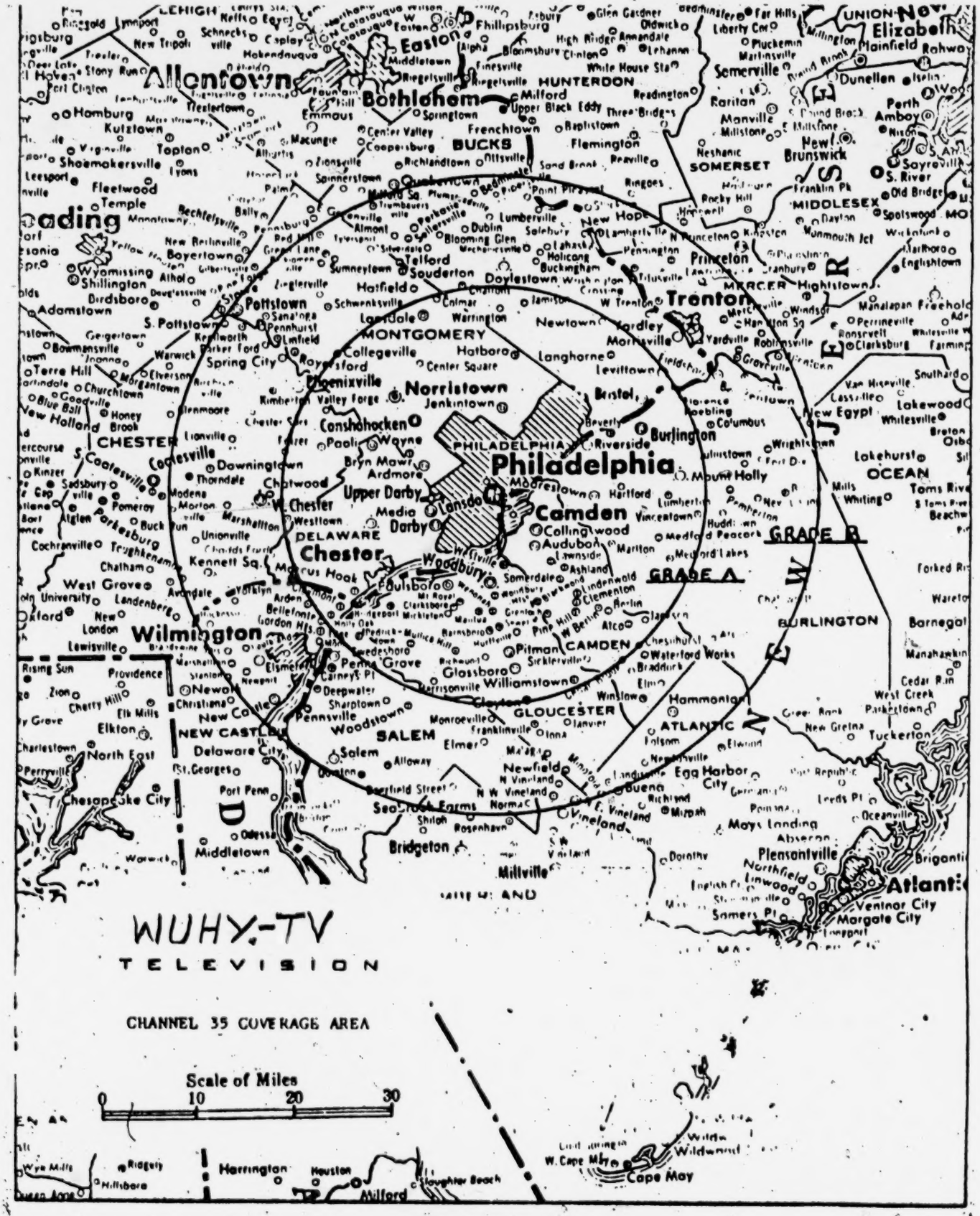

WUHY-TV
TELEVISION
CHANNEL 35 COVERAGE AREA
Scale of Miles
0
10
20
30
Allentown
Bethlehem
Easton
Reading
Pottstown
Norristown
Philadelphia
Camden
Chester
Wilmington
Trenton
New Brunswick
Elizabeth
Atlantic City
Cape May
Millville
Bridgeton
Salem
Woodbury
Burlington
Toms River
Lakewood
Princeton
Somerville
Perth Amboy
Plainfield
Dunellen
Flemington
Phillipsburg
Lambertville
Hightstown
Freehold
Barnegat
Manahawkin
Tuckerton
Pleasantville
Ventnor City
Margate City
Egg Harbor City
Hammonton
Glassboro
Williamstown
Pitman
Haddonfield
Mount Holly
Levittown
Bristol
Burlington
Riverside
Beverly
Morrisville
Yardley
Langhorne
Newtown
Doylestown
Quakertown
Perkasie
Souderton
Telford
Lansdale
Hatfield
Collegeville
Royersford
Phoenixville
Conshohocken
Jenkintown
Abington
Media
Darby
Upper Darby
Lansdowne
Swarthmore
Wallingford
Chadds Ford
Kennett Square
West Chester
Coatesville
Downingtown
Exton
Malvern
Paoli
Wayne
Ardmore
Bryn Mawr
Haverford
Norristown
Pottstown
Boyertown
Kutztown
Hamburg
Fleetwood
Shoemakersville
Leesport
Temple
Wyomissing
Shillington
Birdsboro
Douglassville
Pottstown
Adamstown
Ephrata
Lititz
Lancaster
Columbia
Quarryville
Oxford
Kennett Square
Avondale
West Grove
Landenberg
Elkton
North East
Chesapeake City
Delaware City
New Castle
Middletown
Odessa
Port Penn
Seaford
Laurel
Georgetown
Milford
Harrington
Houston
Greenwood
Hockessin
Newark
Elsmere
Claymont
Marcus Hook
Chester
Aston
Glen Mills
Concordville
Kennett Square
Oxford
Lewisville
Rising Sun
Elkton
Cherry Hill
Zion
Providence
Grove
Charlestown
Perryville
Port Deposit
Conowingo
Rising Sun
Elkton
Newark
Christiana
New Castle
Delaware City
Port Penn
Odessa
Middletown
Townsend
Smyrna
Dover
Camden
Wyoming
Clayton
Harrington
Milford
Lewes
Rehoboth Beach
Bethany Beach
Fenwick Island
Ocean City
Cape May
Wildwood
North Wildwood
Sea Isle City
Avalon
Stone Harbor
Somers Point
Egg Harbor City
Absecon
Brigantine
Atlantic City
Ventnor City
Margate City
Longport
Ocean City
Tuckahoe
Woodbine
Dennisville
Cape May Court House
Rio Grande
Wildwood Crest
Cape May Point
Lewes
Rehoboth Beach
Bethany Beach
Fenwick Island
Selbyville
Frankford
Millsboro
Georgetown
Seaford
Laurel
Delmar
Salisbury
Pocomoke City
Snow Hill
Berlin
Ocean City
Assateague Island
Chincoteague
Wallops Island
Accomack
Onancock
Tangier
Crisfield
Somerset
Princess Anne
Eastern Shore
Delmarva Peninsula
Chesapeake Bay
Delaware Bay
Atlantic Ocean
Pennsylvania
New Jersey
Delaware
Maryland
Virginia
LEHIGH
NORTHAMPTON
BUCKS
MONTGOMERY
BERKS
CHESTER
DELAWARE
PHILADELPHIA
SALEM
GLOUCESTER
CAMDEN
BURLINGTON
MERCER
MIDDLESEX
SOMERSET
HUNTERDON
UNION
OCEAN
ATLANTIC
CAPE MAY
GRADE A
GRADE B

EXHIBIT "A-2"

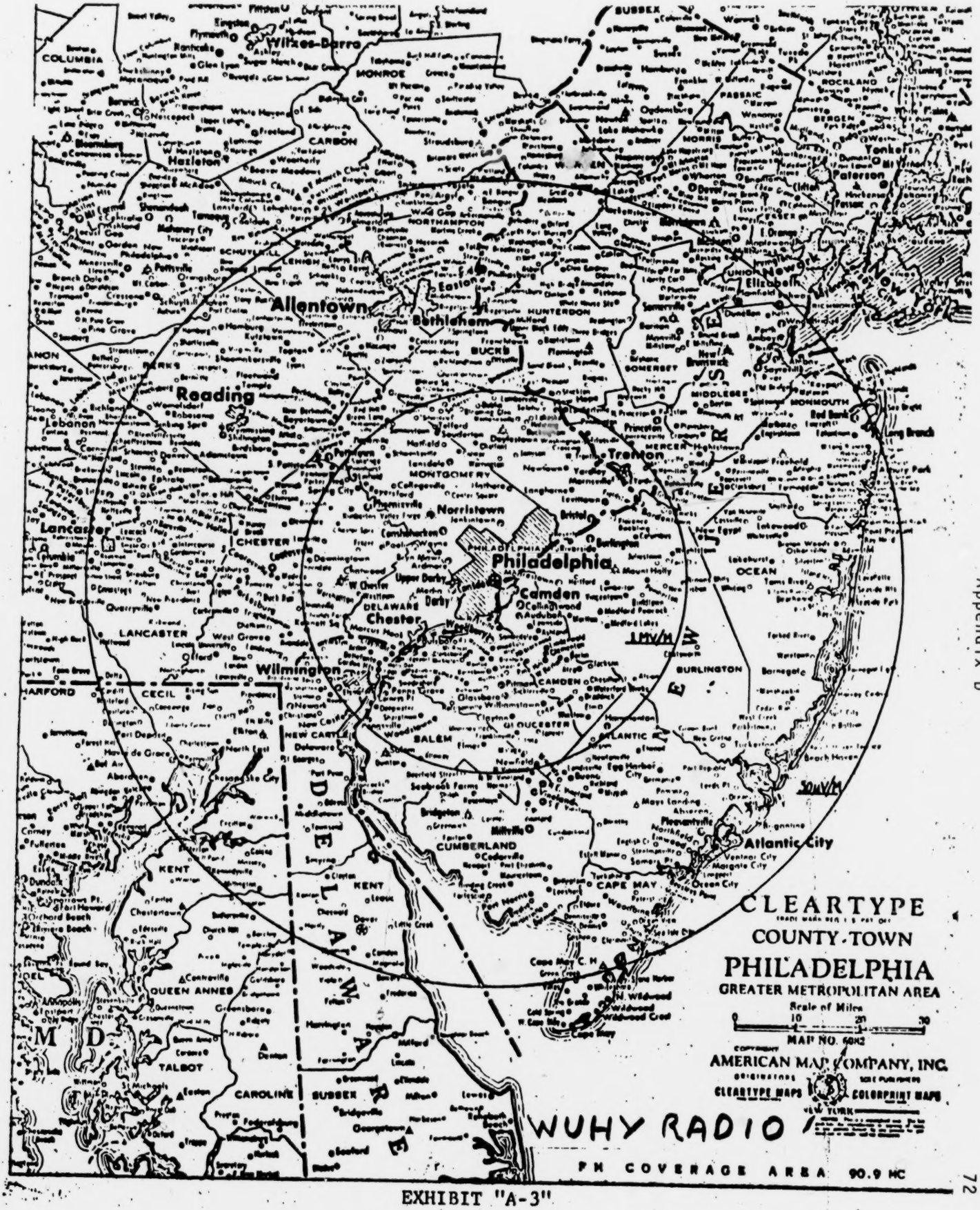

Wilkes-Barre
Allentown
Bethlehem
Easton
Reading
Lancaster
Trenton
Norristown
Philadelphia
Camden
Chester
Wilmington
Atlantic City
CLEARTYPE
COUNTY-TOWN
PHILADELPHIA
GREATER METROPOLITAN AREA
Scale of Miles
10 20 30
MAP NO. 6012
AMERICAN MAP COMPANY, INC.
CLEARTYPE MAPS
COLORPRINT MAPS
WUHY RADIO
FM COVERAGE AREA 90.9 MC

EXHIBIT "A-3"

WHYY, INC.

BOARD OF DIRECTORS AS OF MARCH, 1967

Donald K. Angell, Vice President & Assistant to President, University of Pennsylvania

Mrs. John Biggs, Jr., Board member, Delaware Educational Television Association

Richard C. Bond, Chairman of the Board, The John Wanamaker Store

Dr. Allen T. Bonnell, President, Community College of Philadelphia

Dr. Anthony R. Catrambone, Superintendent of Schools, Camden, New Jersey

Richardson Dilworth, President, Philadelphia Board of Education, former Mayor of Philadelphia

F. Eugene Dixon, Jr., Management Trustee

John Thompson Dorrance, Jr., Chairman of the Board, Campbell Soup Company

Reverend Joseph Flaherty, O. S. A., President, Villanova University

Mrs. George T. Francis, Jr., member of Board of National Recreation & Parks Assn., & Vice President of Educational Television Council

William Goldman, President, William Goldman Theatres, Inc.

Dr. Richard P. Gousha, State Superintendent of Public Instruction, State of Delaware

Dr. William W. Hagerty, President, Drexel Institute of Technology

Mrs. Norma B. Handloff, Mayor of the City of Newark, Delaware

Harry G. Haskell, Jr., former U.S. Representative from Delaware

Philip Klein, President, Board of Trustees, Harcum Junior College

Warren A. Kraetzer, Executive Vice President & General Manager, WHYY, Inc.

J. Harry LaBrum, Esq., partner in law firm of LaBrum & Doak, & former President of Philadelphia Board of Education

J. H. Tyler McConnell, President & Chief Executive Officer, Delaware Trust Co., Wilmington

Albert J. Nesbitt, retired Chairman, I.T.T.-Nesbitt, Inc.

Paul D'Ortona, President of City Council of Philadelphia

R. G. Rincliffe, Chairman of the Board, Philadelphia Electric Company

Dr. T. Edward Rutter, Superintendent of Schools, Radnor Public Schools, Pennsylvania; Chairman Curriculum Advisory Committee & President of Tri-State Instructional Broadcasting Council

Arthur J. Sills, New Jersey State Attorney General

James H. J. Tate, Mayor of City of Philadelphia

Edward F. Toohey, President of Philadelphia Council, AFL/CIO

William B. Walker, President, The First Pennsylvania Banking & Trust Company

EXHIBIT "B"

The daily life of nearly four illion people living in the shadw of Red China is the subject a nnel 12 documentary, Hong Kong", Monday, Sept. 12, 8:30 p.m.

Examining how the people of ong Kong carry on business to e exclusion of politics, the lf-hour report explains why e Red Chinese do not overrun e island.

In the film, the acute poverty contrasted to the wealth of Hong g's affluent international soety as cameras follow hundreds thousands of Communist Chise refugees -- denied a haven Hong Kong -- as they visit area where half a million peass live in squatters' shacks cking plumbing and electricity.

SIBELIUS CENTENARY

In the first of two broadcasts corded at the Sibelius Cenary Festival in Finland, Chan- 12 will present a concert of dom performed works by the te Finnish master, Friday, pt. 16, at 9 p.m. Part two of e Festival will be seen on Fri- y, Sept. 30, at 9 p.m.

On the first program the Finsh Radio Symphony Orchestra ll perform Sibelius' Suite from incidental music to Shakesare's "The Tempest"; Humesqu os. 1, 3, 4 and 8 for olin a.. orchestra, Heimo Haitsoloist; and Cantata for chorand orchestra, "The Origin Fire,"

"Festival: Sibelius Symphony will be rebroadcast on Chan- 12 Sunday, Sept. 18, at 9 p.m.

KING GEORGE V

King George V, England's shy g who was usually worried and zzled by the many problems of lities and war, but who guidhis country through massive cial change without violence, is ofiled on Channel 12's "Men Our Time", Tuesday, Sept. , at 8 p.m.

Featured guest is Robert Macizie, well - known correspont for the BBC and political entist at the London School of onomics, who will comment changes in English history t have resulted from King orge's reign.

DISCUSSES "KING LEAR"

Morris Carnovsky, who played title role in Shakespeare's g Lear at Stratford, Connecut, in 1963, discusses his inpretation of this challenging e with Elliot Norton, Peabody ard-winning drama critic for Dos Record-American and n day Advertiser, Thursday, t. 15, at 8 p.m. on Channel s "Conversations."

Carnovsky recalls how he solvthe difficult problems involved the portrayal of Lear and nments on the intense mental ncentration and physical stamthe part demanded.

ON OTHER PLANETS

Top science fiction and science t writers discuss the possibilof intelligent life on other nets and what it may be like an imaginative "Open End" eat, Thursday, Sept. 15, at 0 p.m.

Writers Ray Bradbury, Lester l Rey, Isaac Asimov and Walt Sullivan speculate on what this rth will be like in 25 years, counting for all the technolal changes that science writare predicting.

Phila. 2, Pa.

Pub -
News Report
Grenlock, N. J.

SEP 1 1965

DATE

Channel 12 Offers Classes For Adults

Channel 12 will present two special two-semester high school courses aimed at adults who may earn their high school diplomas through the Standard Evening Adult High School. The course, "Biology" and "Literature and English Usage," are presented through Philadelphia's Division of School Extension and the Division of Radio and Television.

The biology course is presented Mondays and Thursdays at 7 on WHYY-TV and the "Literature and English Usage" course Wednesday and Friday evenings at the same time.

Viewers seeking credit for either or both of the two courses may register for the semester in the auditorium of Benjamin Franklin High School, Broad and Green streets, Philadelphia, on Wednesday and Thursday, and Tuesdays, October 4 and 11 between 7:30 and 9:30 p.m. At the conclusion of the courses examinations will be held.

Edward H. Goldman, former head of the science department at South Philadelphia High School and co-author of "Biological Science for High School," conducts the biology program.

Dr. Richard Mitchell, professor of English at Glassboro, New Jersey State College, presents the literature series. Dr. Mitchell has taught secondary school English and has been active in dramatics.

Further information about the televised courses may be obtained by calling the Standard Evening Adult High School at LOcust 7-5796.

MUTUAL PRESS
CLIPPING SERVICE
20 S. 15th St.
Phila. 2, Pa.
OCT 27 1966
Glassboro
Enterprise
Glassboro, N. J.

MUTUAL PRESS
CLIPPING SERVICE
20 S. 15th St.
Phila. 2, Pa.
SEP 17 1965
Bridgeton
Evening News
Bridgeton, N. J.

Area Pastors, Congregations View TV Show

Pastors and members of six Glassboro congregations participated in an unusual experience on Sunday evening, October 23, 1966 at the First Presbyterian Church. Together they viewed the Channel 12 program entitled "A Time For Burning."

This program brilliantly spoke to the contradiction of a white congregation professing obedience to the teachings of Jesus but refusing to open its hearts to those of another color. Specifically it dealt with what happened in a Lutheran Church in Omaha, Nebraska, when it was proposed to the official board that ten families from the church visit in the homes of ten families in a Negro Lutheran Church three blocks away.

According to the Reverend Robert W. Shaffer, host pastor: "In the discussion which followed their was compassion expressed for those white persons in many churches who cannot bring themselves emotionally or psychologically to expand their limited experience of brotherhood. Fear was pointed to most frequently as the reason for white persons failing to begin the dialogue. The fact that more Negro than white congregations responded to the invitation was taken as evidence of the need for further progress in local race relations. The warmth, compassion, and courage expressed by Negro participants made it clear how ungrounded many fears are in the light of present realities."

Future inter-congregational and inter-racial meetings may be planned to address specific local issues.

Export Business Dramatized For Viewers Tues.

"Export Means Business," an informative 8-program series produced by Channel 12 and aimed at encouraging American businessmen to explore the possibilities of selling their products to foreign markets, premieres on Channel 12 Tuesday at 7:30 p.m.

Produced by WHYY under a grant from the Pennsylvania Department of Public Instruction, "Export Means Business" uses dramatizations and documentary film footage to show American businessmen the advantages in profit and prestige that accrue from selling goods overseas and demonstrates the methods by which this type of marketing can be accomplished.

The weekly half-hour programs were filmed at the Port of Philadelphia and also show scenes from international exhibitions that have been held in major European and Asian trade centers.

In addition, leading industry and government spokesmen discuss the pros and cons of overseas marketing. Appearing during the course of the series will be Thomas C. Ballagh, President, Ballagh & Thrall, Inc., export managers; Stanley D. Bernstein, President, Quaker Export Packaging Co.; Martin L. Hoffman, Vice President, Allen Forwarding Co.; George L. Kappes, export supervisor, Rohm & Haas Co.; and Dr. Roland L. Kramer, University of Pennsylvania.

Also, Francis Lewis, Insurance Company of North America; William H. Lukens, Chairman, Regional Export Expansion Council; Charles Lyon, Assistant Treasurer, The First Pennsylvania Banking and Trust Co.; Patrick McCabe, Foreign Trade Specialist, U. S. Department of Commerce; and Edward H. McDermott, Customer Service Manager, International Division, The Budd Co.

MUTUAL PRESS
CLIPPING SERVICE
20 S. 15th St.
Phila. 2, Pa.

Bridgeton
Evening News
Bridgeton, N. J.

SEP 24 1965

DATE

Appendix D

74

EXHIBIT "C"

Russian Poet Hits Hard On 12's New 'Showcase'

If it had not been for the unusual, this week's column would be about the new shows on TV's so-called "second season." But the new entries will have to wait. At this point, they're not important. All of them put together are pale in comparison with one program — one 90-minute offering last Sunday night on WHYY TV 12, the educational station.

This rarity in TV programming also was a premiere, the first offering on the "Sunday Showcase" series, 9 p.m., which is financed by a grant from Bristol-Myers. It featured the controversial Russian poet Yevgeny Yetushenko, reading some of his works.

By Ed Devaney

Simple? Yes, it was. Two actors, a man and a woman, first read his works in English. Then Yevgeny mounted a circular platform, stationed amid a small audience, and did the same in Russian — with, of course, all the feeling a poet has for his own works. And, about mid-point in the program, three Western-world poets interviewed Yevgeny for some 15 minutes.

Simple, it was. No plush settings. No attempts to dramatize the poems with visual aids. Merely an audio presentation, with the viewer on his own to conjure up settings and scenes in his mind's eye.

And yet the presentation was dramatic and powerful. Here was this peasant type — young, tall, sinewy, with fair, closely-cropped hair, long arms and massive-looking, expressive hands, dressed in a long-sleeved sport shirt — spouting his lines in Russian from a soap-box setting.

No long hair. In fact, it looked as though a bowl may have been the design for his haircut. No beard, no vandyke. No pipe; he was a chainsmoker of cigarettes.

Yevgeny Yetushenko was powerful. But his poetry was even more. It dripped satire, sense, morality, wisdom, wit, blood, sweat and tears all over the place.

One poem pictured the author as a child witnessing a crowd beating a man. All the townspeople were rushing to see it. He, a mere boy, was asked to join the beating, kicking, stomping of the poor soul. Instead, he tells how he wept. He ended the poem with a line something like this: "If 100 are beating up a man, even if he deserves it, I will never be number 101!"

His satire on spying was devastating. He told about the Chinese secret agent who tried to hide in the sofa, but got caught in the springs. Instead of hollering "Mama, Mama!" the spy yelled "Mao, Mao!" The poem closed with this line: 'A spy will always be a spy; Christ, always Christ."

Another of his poems was about a tart who fell in the mud at a country fair. A young lad picked her up and walked a ways with her. Russian agents watching the pair wondered who was the more dangerous. Yevgeny said: "The most dangerous is someone who can't pass by someone who has been trampled down."

He went on to say that "Russia has been trampled down...but a boy will come along and pick her up."

During the interview he was asked by one the Western poets about his attitude toward American audiences always asking him political questions. His reply: "There are many ugly faces you'd like to slap. But there is one danger to this. When you slap too often, your hand loses its sensitivity."

And this was followed on Channel 12 by David Susskind's show, the highlight of which was an interview with a fashion designer who selects "The Ten Worst Dressed Women of the Year." Hilarious. And so true.

If "Sunday Showcase" follows the form of its premiere, TV-12 is going to have a blockbuster of a programming block on Sunday nights with Susskind and his usual entertaining, provocative, intelligent shows following.

Even though the year is only a babe, I've already got to list last week's "Sunday Showcase" as one of the top television programs of this or any other season.

MUTUAL PRESS
CLIPPING SERVICE
Phila. 2, Pa.

Catholic Star
Herald
Camden, N. J.

DAWN 13 1967

Exhibit "D".

NEW JERSEY ORIENTED PROGRAMS

PROFILE NEW JERSEY

Produced by WNDT-TV. Aired on WHYY September 18, 1964 through March 12, 1965. 24 programs—30 minutes.

SCIENCE AND AGRICULTURE

Produced by WHYY in cooperation with Rutgers University. Aired on WHYY September 16, 1963 through June 1, 1964. 35 programs—15 minutes.

LET'S LOOK AT AGRICULTURE

Produced by WHYY in cooperation with Rutgers University, Department of Agriculture. Aired on WHYY September 17, 1963 through June 2, 1964. 35 programs—10 minutes.

MODERN AGRICULTURE

Produced by WHYY in cooperation with Rutgers University. Aired on WHYY September 28, 1964 through June 7, 1965. 35 programs—15 minutes.

WOMAN'S WORLD

Produced by WHYY in cooperation with Rutgers University, Department of Home Economics. Aired on WHYY October 16, 1964 through June 4, 1965. 30 programs—25 minutes.

SO YOU WANT TO GO TO COLLEGE

Produced by WHYY in cooperation with Glassboro College. Aired on WHYY Fall 1963 and Spring 1964. Rerun again during January and February 1966. 8 programs—30 minutes.

NEW JERSEY CHAMBER OF COMMERCE ANNUAL WASHINGTON DINNER

Featured state and local dignitaries. Aired on WHYY February 5, 1967. 2 hours.

TV 12 News Digest

Stories on New Jersey from the Associated Press wire service.

Status Report

"The New Jersey Bond Issue". Produced by WHYY. Aired October 21, 1963. A panel discussion dealing with the pending vote on the New Jersey Bond Issue for $750 million.

"Automation: An Enemy of the People". Produced by WHYY. Aired September 16, 1963 and September 23, 1963. A two-part program dealing on the unemployment problem created by automation. Guest on the show was Dr. Mason Gross, President of Rutgers University.

Metro Spect

"The Delaware River Basin Authority". Produced by WHYY. Aired March 2, 1967. Featured interviews with Governor Hughes as well as the Governors of New York, Pennsylvania and Delaware.

Whose Right to Know?

Produced by WHYY for National Educational Television. Aired on WHYY July 26, 1966. The program centered around the "free press, fair trial" issue and was filmed in the Hunterdon County Court House where the Lindberg kidnap trial was held.

Metro Spect

"Paul Ylvisaker, A Profile". Produced by WHYY. Will be aired on WHYY on June 1, 1967. A half hour interview with the Commissioner for the Department of Community Affairs for New Jersey.

Inauguration of Governor Hughes

Filmed in its entirety and the highlights were presented on the Channel 12 News.

APPENDIX E.

STATE OF DELAWARE

OFFICE OF SECRETARY OF STATE

I, GEORGE J. SCHULZ, Secretary of State of the State of Delaware, DO HEREBY CERTIFY, That METROPOLITAN PHILADELPHIA EDUCATIONAL RADIO AND TELEVISION CORPORATION, a Corporation created and existing under the laws of the State of Pennsylvania, has filed in this Office a certified copy of its charter and the name of Corporation Guarantee and Trust Company, No. 927 Market Street of the City of Wilmington as its authorized agent in this State, together with a sworn statement of the assets and liabilities of the said Corporation, and has paid to the Secretary of State of this State, for the use of the State Twenty-five Dollars, and has paid the Secretary of State the fee therefore, and is therefore entitled to do business in this State.

PROVIDED, however that the said METROPOLITAN PHILADELPHIA EDUCATIONAL RADIO AND TELEVISION CORPORATION shall not within the limits of this State by any implication or construction, be deemed to possess the power of discounting bills, notes, or other evidence of debt, of receiving deposits, of buying gold or silver bullion, or foreign coins, or buying and selling bills of exchange, or of issuing bills, notes, or other evidence of debt upon loan for circulation as money.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Secretary of State, at Dover, this twenty-first day of July (Seal) in the year of our Lord one thousand nine hundred and fifty-nine.

GEORGE J. SCHULZ,
Secretary of State.

STATE OF NEW JERSEY

DEPARTMENT OF STATE.

I, the Secretary of State of the State of New Jersey, DO HEREBY CERTIFY that METROPOLITAN PHILADELPHIA EDUCATIONAL RADIO AND TELEVISION CORPORATION, a Corporation organized under the laws of the Commonwealth of Pennsylvania, has complied with all the requirements of Title 14: Chapter 15, "Foreign Corporations" of the Revised Statutes of New Jersey, and that the business of said corporation to be carried on within the State of New Jersey is such as may be lawfully carried on by corporations incorporated under the laws of this State for similar business.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at Trenton, this Twenty-first day of July, A. D. 1959.

(Seal)

EDWARD J. PATTEN,
Secretary of State.

STATE OF NEW JERSEY

SALES TAX CERTIFICATE OF AUTHORITY

THE NEW JERSEY SALES AND USE TAX ACT (C. 30, L. 1966)
Division of Taxation—Sales Tax Bureau

TRENTON, NEW JERSEY 08625

The person, partnership or corporation named below is hereby authorized to collect sales taxes pursuant to the New Jersey Sales and Use Tax Act. This authorization is good ONLY for the named person at the location specified herein. This authorization is null and void if any change of ownership or address is effected.

Certificate No. 236-392-333
Date Issued 07-01-66

WHYY, INC. ALSO CHANNEL 12
4548 MARKET ST.
PHILADELPHIA, PA. 19139

WILLIAM KINGSLEY,
Director, Division of Taxation

This Certificate is NOT assignable or transferable. It must be conspicuously displayed at above address.

ST-2

(See reverse side)

STATE OF NEW JERSEY

EXEMPT ORGANIZATION PERMIT

THE NEW JERSEY SALES AND USE TAX ACT

(C. 30, L. 1966 as Amended)

Division of Taxation—Sales Tax Bureau

TRENTON, NEW JERSEY 08625

In accordance with applicable provisions of the New Jersey Sales and Use Tax Act, Ch. 30, L. 1966, as amended, the organization whose name appears below is certified to be exempt from all sales and use taxes applicable to purchases of tangible personal property to be used solely and exclusively by that organization.

Permit No.: EO-236-392-333
Date Issued 02-02-67

WHYY INC. ALSO CHANNEL 12
4548 MARKET ST.
PHILADELPHIA, PA. 19139

WILLIAM KINGSLEY,
Director, Division of Taxation

This Permit is NOT assignable or transferable.

(Letterhead of)

CITY OF WILMINGTON, DELAWARE

O. FRANCIS BIONDI
City Solicitor
JAMES M. MULLIGAN, JR.
First Assistant Solicitor
STANLEY T. CZAJKOWSKI
Assistant Solicitor
FRANK J. GENTILE, JR.
Assistant Solicitor
ALFRED A. SNIADOWSKI
Assistant Solicitor

January 24, 1964

Mr. David Kaigler, Station Manager
WHYY-TV 12
5th and Scott Streets
Wilmington, Delaware 19805

Dear Mr. Kaigler:

You are correct in your understanding that since you are a non-profit corporation you will not be required to pay the City license fee, and the City License Bureau has been so notified.

If this office can be of any further help to you please do not hesitate to call upon us.

Very truly yours,

O. FRANCIS BIONDI,
City Solicitor.

OFB:s
cc: City License Bureau

(Letterhead of)

STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
State House Annex
Trenton 25

Division of Taxation Corporation Tax Bureau

May 20, 1960

Corporation Guarantee and Trust Company
Land Title Building
Philadelphia 10, Pennsylvania

ATTN: Mr. Charles A. Adami,
Treasurer

RE: WHYY, Inc.,
#9289-5450

Gentlemen:

Reference is made to your letter of April 22, 1960 enclosing an affidavit of the Assistant Treasurer of the above named corporation.

Relying upon statements contained in the affidavit, the Bureau has determined that the above named corporation is a non-profit corporation, exempt from the payment of a corporation franchise tax.

Very truly yours,

J. P. McDONOUGH,
State Supervisor,
By: WALTER B. SAUER,
Walter B. Sauer,
Examiner.

WBS:hod

(Letterhead of)
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF REVENUE
DIVISION OF SALES AND USE TAX
Harrisburg

January 4, 1957

In your reply please refer to
SDN:SSU

Metropolitan Philadelphia Educational
Radio and Television Corporation
1622 Chestnut Street
Philadelphia, Pennsylvania

E01001

Gentlemen:

This letter is your authority to purchase tangible personal property tax-free under the provisions of TRa-203(a) and (f).

In making your purchases which are to be used to carry out the function of your institution it is necessary that you execute the Exemption Certificate along with the assigned number. This exemption is limited in that it does not absolve you from paying Sales Tax on all your purchases, but rather only on those purchases of tangible personal property which are to be used to carry out the function of your institution. A non-profit educational institution is never exempt from the payment of the Sales Tax on any materials, supplies and equipment used in the construction, reconstruction, remodeling, repair and maintenance of real estate.

Should any questions arise concerning the use of this number kindly refer them to your counsel.

Very truly yours,

SEBASTIAN D. NATALE,
Sebastian D. Natale,
Legal Unit.

SDN:kd

(Letterhead of)

CITY OF PHILADELPHIA

BOARD OF REVISION OF TAXES
302 Commercial Trust Building
16 South Broad Street, Philadelphia 2, Pa.

Members of Board
JOSEPH J. BURNS
Chairman
AUSTIN NORRIS
Secretary
WILLIAM F. MEADE
MICHAEL J. BRADLEY
CORNELIUS S. DEEGAN, JR.
F. RAYMOND HEUGES
JOSEPH M. O'BRIEN

March 19, 1965

Mr. Philip Klein
1424 Walnut Street
Philadelphia.

In Re: 4548 Market Street
Philadelphia, Pa.

Dear Mr. Klein:

On January 21, 1965 this property was exempted, by my order, for the Year 1964 and thereafter.

The Department of Collections has been so notified by letter dated January 21, 1965, and the Board will see that this error by the Department of Collections will be corrected.

Sincerely yours,

AUSTIN
Austin Norris

(Letterhead of)
U. S. TREASURY DEPARTMENT
Internal Revenue Service
Washington, D. C. 20224

In Reply Refer to
T:R:EO:1
EPB

May 12 1964

WHYY, Inc.
(f/k/a Metropolitan Philadelphia
Educational Radio and Television
Corporation)
1622 Chestnut Street
Philadelphia, Pennsylvania

Gentlemen:

This is in reply to your letter of February 17, 1964, in which you request that your name be properly listed in the Cumulative List.

Our records show that on October 18, 1961, we acknowledged your change of name and took the necessary action to list your new name in the Cumulative List. Your present name appears on page 335 of the current issue of the Cumulative List revised to December 31, 1962.

Appropriate steps are being taken to remove your former name from the next edition of Publication No. 78, which was inadvertently listed at page 215 of the Cumulative List, Publication No. 78, (Rev. 12-62).

Your District Director is being advised of this action.

Very truly yours,

R. J. STAKEM
Acting Chief, Exempt Organizations Branch

(Letterhead of)

U. S. TREASURY DEPARTMENT
Internal Revenue Service
Washington 25, D. C.

In Reply Refer to
T:R:EO:4
TSP

Feb 18 1959

Metropolitan Philadelphia Educational Radio
and Television Corporation
1622 Chestnut Street
Philadelphia 3, Pennsylvania

Gentlemen:

It is the opinion of this office, based upon the evidence presented, that you are exempt from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code of 1954, as it is shown that you are organized and operated exclusively for charitable and educational purposes.

Accordingly, you are not required to file income tax returns unless you change the character of your organization, the purposes for which you were organized, or your method of operation. Any such changes should be reported immediately to the District Director of Internal Revenue for your district in order that their effect upon your exempt status may be determined.

You are required, however, to file an information return, Form 990A, annually, with the District Director of Internal Revenue for your district so long as this exemption remains in effect. This form may be obtained from the District Director and is required to be filed on or before the

fifteenth day of the fifth month following the close of your annual accounting period, which ends April 30.

Contributions made to you are deductible by the donors in computing their taxable income in the manner and to the extent provided by section 170 of the 1954 Code.

Bequests, legacies, devises or transfers to or for your use are deductible in computing the value of the taxable estate of a decedent for Federal estate tax purposes in the manner and to the extent provided by sections 2055 and 2106 of the 1954 Code. Gifts of property to or for your use are deductible in computing taxable gifts for Federal gift tax purposes in the manner and to the extent provided by section 2522 of the 1954 Code.

No liability is incurred by you for the taxes imposed under the Federal Insurance Contributions Act (social security taxes) unless you have filed a waiver of exemption certificate in accordance with the applicable provisions of such Act. In the event you desire social security coverage for your employees or have any questions relating to the filing of a waiver of exemption certificate you should take the matter up with your District Director of Internal Revenue.

Your attention is called to the provisions of section 501(c)(3) of the Internal Revenue Code of 1954 under which your exemption will be revoked if any substantial part of your activities consists of carrying on propaganda, or otherwise attempting, to influence legislation, or if you participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

Failure to file the required information return or to otherwise comply with the provisions of section 6033 of the Code and regulations applicable thereto may result in the termination of your exempt status.

Any reference herein to a provision of the 1954 Code shall be deemed a reference to the corresponding provisions of the 1939 Code.

The District Director of Internal Revenue for your district is being advised of this action.

This ruling is also applicable to you under your former name, "Delaware Valley Educational Television Corporation".

Very truly yours,

J. F. WORLEY
Chief, Exempt Organizations Branch

SUPREME COURT, U. S.

FILED

MAY

JOHN F. DAVIS, CLERK

APPENDIX

IN THE

Supreme Court of the United States

October Term, 1968

No. [redacted] /0

WHYY, INC.,

Appellant,

v.

BOROUGH OF GLASSBORO

and

DIVISION OF TAX APPEALS OF THE DEPARTMENT OF THE TREASURY OF THE STATE OF NEW JERSEY,

Appellees.

On Appeal From the Supreme Court of New Jersey.

APPEAL FILED SEPTEMBER 19, 1967

PROBABLE JURISDICTION NOTED MARCH 11, 1968

INDEX TO APPENDIX.

CHRONOLOGICAL LIST OF RELEVANT DATES A-1

APPENDIX A A-3

Opinion of Superior Court of New Jersey A-3

Opinion of Supreme Court of New Jersey A-6

APPENDIX B A-14

New Jersey Statutes Annotated, Title 14, Chap. 15-2 .... A-14

New Jersey Statutes Annotated, Title 54, Chap. 4-3.6 .... A-15

United States Constitutional Amendment XIV A-17

APPENDIX C A-19

Petition to Gloucester County Board of Taxation ..A-19, A-22

Judgment of Gloucester County Board of Taxation A-23

Petition to Division of Tax Appeals A-24, A-26

Opinion of Anthony H. Lario, President of Division of Tax Appeals A-33

APPENDIX D A-46

Supplementary Factual Statement of the Nature and Extent of the Charitable Educational Benefits of WHYY within the State of New Jersey A-46

Appendix.

CHRONOLOGICAL LIST OF RELEVANT DATES.

8/13/64	Petition to the Gloucester County Board of Taxation for Lot 18D.
8/13/64	Petition to the Gloucester County Board of Taxation for Lot 29.
10/27/64	Judgment Gloucester County Board of Taxation.
11/30/64	Petition to the Division of Tax Appeals in the Department of the Treasury for Lot 18D.
11/30/64	Petition to the Division of Tax Appeals in the Department of the Treasury for Lot 29.
6/18/65	Affidavit "Exhibit A" filed in support of petition to the Division of Tax Appeals in the Department of the Treasury.
11/17/65	Opinion of the Division of Tax Appeals and the Division of the Treasury. Lario, President.
11/17/65	Judgment Division of Tax Appeals in the Department of the Treasury of Lot 18D.
11/17/65	Judgment Division of Tax Appeals in the Department of the Treasury of Lot 29.
12/18/65	Notice of Appeal to Superior Court of New Jersey, appellate division, and affidavit of service.
5/20/66	Opinion Superior Court of New Jersey. Mandate for affirmance.

A2

6/28/66 Notice of Appeal to the Supreme Court of New Jersey and affidavit of service.

5/18/67 Supplemental factual statement of the nature and extent of the charitable educational benefits bestowed within the borders of New Jersey by WHYY, Inc. television and radio broadcasts with accompanying Exhibits "A" to "F".

7/ 5/67 Opinion of the Supreme Court of New Jersey. Schettino, J. Mandate on affirmance.

9/19/67 Notice of Appeal to the United States Supreme Court filed.

3/11/68 Probable jurisdiction noted by the Supreme Court.

APPENDIX A.

OPINIONS BELOW.

OPINION OF SUPERIOR COURT OF NEW JERSEY.

Reported at 91 N. J. Super. 269, 219 A. 2d 893 (1966)

Submitted May 16, 1966—Decided May 20, 1966.

Before: Judges GOLDMANN, FOLEY and COLLESTER.

MR. FRANK J. FERRY, Attorney for Appellant.

MR. JOHN W. TRIMBLE, Attorney for Respondent, Borough of Glassboro.

MR. ELIAS ABELSON, Deputy Attorney General, filed a statement in lieu of brief for respondent Division of Tax Appeals (MR. ARTHUR J. SILLS, Attorney General, Attorney).

PER CURIAM

WHYY, Inc. appeals from judgments of the Division of Tax Appeals affirming the action of the Gloucester County Tax Board in denying its application for tax exemption of property owned by it in Glassboro. WHYY is a Pennsylvania corporation whose principal office is located in Philadelphia. It was formed as a nonprofit corporation to provide cultural, recreational and educational radio and television broadcasts in the Delaware Valley area, and to establish, construct and otherwise acquire or operate noncommercial, educational radio and television broadcast

stations and facilities in Pennsylvania, New Jersey and Delaware. The company is registered in this State as a foreign nonprofit corporation, authorized to do business in New Jersey.

The Federal Communications Commission has licensed WHYY to operate and telecast over Channel 12 as a noncommercial, educational station. It has studios in Philadelphia, Pa. and Wilmington, Del. The facilities in New Jersey consist of 50 acres located in Glassboro, on which are erected a transmittal building and a 1,000-foot guy tower, the heart of its broadcasting system. WHYY is precluded from all commercial advertising. It depends on contributions from school systems and individuals to finance its operations.

The corporation appealed to the Gloucester County Tax Board from assessments levied against its property in Glassboro, claiming tax exemption as a nonprofit and educational institution. The board upheld the assessments. The Division of Tax Appeals affirmed that action upon appeal.

WHYY asserts that as a registered nonprofit foreign corporation it is authorized to own real property in New Jersey, R. S. 14:15-1; that under R. S. 14:15-2 a foreign corporation doing business here is subject to all the benefits as well as burdens of our laws, and for these reasons it is entitled to any exemption a New Jersey corporation might claim. It therefore contends that it should have been granted a tax exemption as an educational and charitable nonprofit corporation by virtue of the provisions of N. J. S. A. 54:4-3.6.

The flaw in this reasoning becomes apparent upon a reading of the statute. After listing the various categories of property entitled to tax exemption, N. J. S. A. 54:4-3.6 concludes with the following language:

> "The following exemptions shall apply only where the association, corporation or institution claiming the exemption owns the property in question *and is in-*

corporated or organized under the laws of this State and authorized to carry out the purposes on account of which the exemption is claimed." (Italics ours.)

The statutory language is entirely clear. WHYY meets two of its requirements: it owns the property in question and is authorized to carry out the purposes on account of which the exemption is claimed. However, the company is not "incorporated or organized under the laws of this State." Were it not for this, it would meet the criteria of N. J. S. A. 54:4-3.6.

Statutes granting exemption from taxation are construed most strongly against the claimant, who bears the burden of proving a tax-exempt status. *Princeton University Press v. Princeton*, 35 N. J. 209, 214 (1961), and cases there cited. WHYY would avoid the very specific requirement of the quoted statute by arguing that although it is not "incorporated" under the laws of New Jersey, it is "organized" under our laws; that being fully qualified to transact business here under R. S. 14:15-2 and subject to all our laws, it should therefore be entitled to tax exemption. The words "incorporated or organized" in the closing sentence of N. J. S. A. 54:4-3.6 refer back to the beginning of that sentence and relate to "association, corporation or institution." The word "organized" refers to associations or institutions that may not be "incorporated"—it certainly does not refer to foreign corporations which are incorporated or organized in another state.

Appellant claims that a strict interpretation of the statute so as to require bona fide, foreign nonprofit corporations to incorporate in New Jersey is unreasonable and has no relation to the expressed objective of the legislation, which is to foster and encourage educational, charitable and cultural endeavors. However, as stated, statutes of exemption from taxation must be strictly construed. If the subjects of exemption are to be enlarged, it is for the Legislature to bestow that privilege, and not the courts.

Affirmed.

OPINION OF SUPREME COURT OF NEW JERSEY

A-94 September Term 1966

Reported at 50 N. J. 6, 231 A. 2d 608 (1967)

WHYY, INC.,
Petitioner-Appellant,

v.

BOROUGH OF GLASSBORO,
Respondent-Respondent,

and

DIVISION OF TAX APPEALS OF THE DEPARTMENT OF THE TREASURY OF THE STATE OF NEW JERSEY,
Respondent.

Argued May 24, 1967. Decided July 5, 1967.

On appeal from the Superior Court, Appellate Division, whose opinion is reported in 91 *N. J. Super.* 269 (1966).

Mr. Grover C. Richman, Jr. argued the cause for petitioner-appellant (*Mr. Frank J. Ferry* and *Messrs. Richman, Berry & Ferren,* attorneys).

Mr. John W. Trimble argued tthe cause for respondent-respondent.

Mr. Elias Abelson, Deputy Attorney General, filed a statement in lieu of a brief for respondent Division of Tax Appeals (*Mr. Arthur J. Sills,* Attorney General of New Jersey, attorney).

The opinion of the Court was delivered by

SCHETTINO, *J.*

This is an appeal involving property tax assessments for the year 1964.

WHYY, INC., a nonprofit Pennsylvania corporation authorized to do business in New Jersey, provides recreational and educational radio and television broadcasts in the Delaware Valley area. Its registered office in New Jersey is at 709 Market Street, Camden. The corporation's license precludes all commercial advertising. Consequently, WHYY is dependent upon contributions for its financing. Among its donors are the Board of Education of Philadelphia, the City of Philadelphia, the Tri-State Instruction Council, and others.

The facilities of the corporation in New Jersey, located in the Borough of Glassboro, consist of 50 acres of land, on which are erected a transmittal station and a tower.

WHYY did not apply for a tax exemption pursuant to the procedures set forth in *N. J. S. A.* 54:4-4.4.[1] The radio station did, however, request the Glassboro Council on November 12, 1963 for an exemption from taxes as an educational nonprofit corporation. Prior to this request, by letter dated November 7, 1963 to the Glassboro Council, WHYY forwarded a copy of the corporation's Annual Report and the corporation's charter to demonstrate its nonprofit and educational character.

The claim for exemption was denied. WHYY petitioned the Gloucester County Board of Taxation, claiming an exempt status. Again, the claim was denied. WHYY then petitioned the State Division of Tax Appeals, and the claim was there denied. An appeal was taken to the Appellate Division, which affirmed, 91 *N. J. Super.* 269 (1966),

1. "Every municipal tax assessor shall, on or before October 1, 1951, obtain from each owner of real property in his taxing district, for which a tax exemption is claimed, an initial statement under oath in such form as shall be prescribed by the Director, Division of Taxation, showing the right to the exemption claimed. Thereafter, and on or before November 1 of each year, said assessor shall obtain an initial statement, if one has not theretofore been filed."

holding that WHYY's property, although owned by a nonprofit corporation, was not exempt from New Jersey tax inasmuch as WHYY was not incorporated or organized under the laws of New Jersey as is required by *N. J. S. A.* 54:4-3.6.[2] WHYY thereafter appealed to this Court.

The fundamental approach of our statutes is that ordinarily all property shall bear its just and equal share of the public burden of taxation. As the existence of government is a necessity, taxes are demanded and received in order for government to function. Statutes granting exemption from taxation represent a departure and consequently they are most strongly construed against those claiming exemption. The burden of proving a tax-exempt status is upon the claimant. *Bloomfield v. Academy of Med. of N. J.*, 47 *N. J.* 358, 363 (1966); *Pingry Corp. v. Hillside Tp.*, 46 *N. J.* 457, 461 (1966); *Princeton Univ. Press v. Princeton*, 35 *N. J.* 209, 214 (1961).

WHYY argues (1) that if *N. J. S. A.* 54:4-3.6 discriminates against foreign corporations in granting exemptions, it is unconstitutional and is a violation of the equal protection clause of the Fourteenth Amendment; (2) that because it has qualified to transact business in New Jersey by registering with the Secretary of State, it is in effect organized under the laws of New Jersey within the meaning of *N. J. S. A.* 54:4-3.6 and, thus, is entitled to exemption; and

---

2. *N. J. S. A.* 54:4-3.6 encompasses the exemption from taxation of property of certain nonprofit organizations. It reads in pertinent part as follows:

> "The foregoing exemption shall apply only where the association, corporation or institution claiming the exemption owns the property in question and is incorporated or organized under the laws of this State and authorized to carry out the purpose on account of which the exemption is claimed."

Chapter 24 of the Laws of 1967, effective April 18, 1967, supplements *N. J. S. A.* 54:4-3.6 and bears directly on tax exemptions granted to foreign and domestic nonprofit television stations. This new act is "applicable only to taxes payable in 1968 and thereafter." As the litigation here concerns taxes payable for the year 1964, this supplementary act does not apply.

(3) that it would be useless for it to go through the meaningless act of incorporating in this State.

The Borough moved to dismiss the appeal before us, urging that the constitutional issue was not raised prior to the appeal to us and, as the decision by the Appellate Division was unanimous, WHYY has no right to appeal. *R. R.* 1:7-1(c). Secondly, the Borough argues that because WHYY is a foreign corporation which did not organize under the laws of New Jersey within the meaning of *N. J. S. A.* 54:4-3.6, it is not entitled to an exemption. Finally, the Borough argues that the failure by WHYY to comply with *N. J. S. A.* 54:4-4.4 precludes the station from claiming a tax exemption.

I.

This Court may but need not accept a constitutional question not raised below. *Lattieri v. State Board of Medical Examiners,* 24 *N. J.* 199, 206 (1957). As this constitutional contention is one of great concern to many municipalities and nonprofit foreign corporations, the public interest in this question demands that it be decided. *Cf. Bd. of Ed., E. Brunswick Tp. v. Tp. Council, E. Brunswick,* 48 *N. J.* 94, 109 (1966); *State v. Perricone,* 37 *N. J.* 463, 469, *certiorari* denied 371 *U. S.* 890, 83 *S. Ct.* 189, 9 *L. Ed.* 2*d* 124 (1962).

The Legislature is given wide latitude in classifying for the purposes of taxation. That another classification might be superior or equal to the Legislature's classification is not enough to show that a statute is unconstitutional. As long as the statute may be justified on any reasonable theory, the Legislature's determination will be upheld. *General Electric Co. v. Passaic,* 28 *N. J.* 499, 506-10 (1958), appeal dismissed 359 *U. S.* 1006, 79 *S. Ct.* 1146, 3 *L. Ed.* 2*d* 987 (1959).

Moreover, there is a strong presumption that a statute is constitutional, *In re Loch Arbour,* 25 *N. J.* 258, 264-65 (1957), and a legislative act will not be declared void unless its repugnancy to the Constitution is clear beyond a reason-

able doubt. *Gangemi v. Berry*, 25 *N. J.* 1, 10 (1957). "To declare a statute unconstitutional is a judicial power to be delicately exercised." *Wilentz v. Hendrickson*, 133 *N. J. Eq.* 447, 487 (*Ch.* 1943), affirmed 135 *N. J. Eq.* 244 (*E. & A.* 1944). It is true that a classification may not be arbitrary, but the burden of proof is on him who asserts an unjust and illegal discrimination. *Wiramal v. Director of Div. of Taxation*, 36 *N. J.* 201, 210 (1961); *Harvey v. Essex County Board of Freeholders*, 30 *N. J.* 381, 388-91 (1959).

As noted above, the Legislature is given considerable latitude in determining classes for purposes of taxation. The Legislature is presumed to have a valid classification in mind. Distinctions will be presumed to rest upon a rational basis if there be any conceivable state of facts which would afford reasonable support for them. *Harvey v. Essex County Board of Freeholders, supra*, 30 *N. J.* at 388-91.

Here, there are possibilities for treating foreign nonprofit corporations differently from domestic nonprofit corporations.

It should be noted that our statute requires not only that the property be used for a specified purpose but also that the owner shall be a nonprofit organization. The corporation laws of sister states may be less exacting than New Jersey with respect to what organizations qualify as nonprofit. If New Jersey were to grant tax exemptions to foreign nonprofit corporations because the state of incorporation deemed them to be nonprofit in nature, it may well be that exemptions would thereby be granted to corporations which, if formed here, would not have a tax exempt status. The Legislature could validly decide that the State should not be burdened with the administrative problem of checking the status of foreign corporations under foreign laws and evaluating them with our requirements.

We hold that the statute is not unconstitutional.

II.

WHYY seeks to avoid the requirement of *N. J. S. A.* 54:4-3.6, that to be entitled to an exemption a nonprofit corporation must be "incorporated or organized under the laws of this State." WHYY argues that although it is not incorporated under the laws of New Jersey, it is "organized" under our laws because it qualified to transact business here by registering with the Secretary of State. It, therefore, should be entitled to an exemption.

We agree with the Appellate Division interpretation of *N. J. S. A.* 54:4-3.6. The word "incorporated" refers back to nonprofit associations, whereas the word "organized" refers back to nonprofit associations and institutions which may not be "incorporated." Certainly, the word "organized" does not refer to foreign corporations which qualify and register but which are not incorporated in this State. See Appellate Division's opinion, 91 *N. J. Super.* 272.

III.

As WHYY is not entitled to a tax exemption under *N. J. S. A.* 54:4-3.6, it is not necessary for us to determine whether the failure by WHYY to comply with *N. J. S. A.* 54:4-4.4 (notifying the tax assessor before November 1 of a claim to an exemption) should preclude the station from asserting an exempt status.

Affirmed; no costs.

SUPREME COURT OF NEW JERSEY

WHYY, Inc., *Petitioner-Appellant,*	Appeal Docket No. 5287
v.	
Borough of Glassboro, *Respondent-Respondent,*	Civil Action On Appeal
and	
Division of Tax Appeals, *Respondent.*	Mandate on Affirmance

This cause having been duly argued before this Court by Mr. Grover C. Richman, Jr., counsel for the appellant and Mr. John W. Trimble and Mr. Elias Abelson, counsel for the respondent, and the Court having considered the same,

It is hereupon ordered and adjudged that the judgment of the said Superior Court, Appellate Division is affirmed; and it is further ordered that this mandate shall issue ten days hereafter, unless an application for rehearing shall have been granted or is pending, or unless otherwise ordered by this Court, and that the record be remitted to the Superior Court, Appellate Division to be there proceeded with in accordance with the rules and practice relating to that court, consistent with the opinion of this Court.

WITNESS the Honorable JOSEPH WEINTRAUB, Chief Justice, at Trenton on the 5th day of July, 1967.

JOHN H. GILDEN,
Clerk of the Supreme Court.

A True Copy

JOHN H. GILDEN
Clerk

Filed
Jul 5 1967
JOHN H. GILDEN
Clerk

APPENDIX B.

TEXT OF STATUTES.

NEW JERSEY STATUTES ANNOTATED.
TITLE 14, CHAPTER 15-2.

14:15-2. Foreign Corporations Subject to Title.

A foreign corporation doing business in this state shall be subject to the provisions of this title, so far as the same can be applied to foreign corporations.

14:15-3. Copy of Charter and Statement to Be Filed; Certificate of Authority to Do Business.

Every foreign corporation, except banking, insurance, ferry and railroad corporations, transacting any business in this state, shall file in the office of the secretary of state a copy of its charter or certificate of incorporation, attested by its president and secretary, under its corporate seal, and a statement attested in like manner setting forth:

a. The amount of its authorized capital stock and the amount actually issued;

b. The character of the business which it is to transact in this state; and

c. The principal office of the corporation in this state and the name and place of abode of an agent upon whom process against such corporation may be served, which agent shall be a domestic corporation or a natural person of full age actually resident in this state, and the agency shall continue until the substitution, by writing, of another agent.

Thereupon the secretary of state shall issue to the corporation a certificate that it is authorized to transact

business in this state, and that the business is such as may be lawfully transacted by corporations of this state, and he shall keep a record of all such certificates issued.

14:15-4. Certificate of Authority to Do Business Prerequisite to Suits on Contracts.

Until such corporation so transacting business in this state shall have obtained such certificate of the secretary of state, it shall not maintain any action in this state upon any contract made by it in this state.

NEW JERSEY STATUTES—TITLE 54, CHAPTER 3.6. EXEMPTIONS FROM TAXATION.

54:4-3.6. Exemption of Property of Nonprofit Organizations

The following property shall be exempt from taxation under this chapter: All buildings actually used for colleges, schools, academies or seminaries; all buildings actually used for historical societies, associations or exhibitions, when owned by the State, county or any political subdivision thereof; all buildings actually and exclusively used for public libraries, religious worship or asylum or schools for feeble-minded or idiotic persons and children; all buildings used exclusively by any association or corporation formed for the purpose and actually engaged in the work of preventing cruelty to animals; all buildings actually and exclusively used and owned by volunteer first-aid squads, which squads are or shall be incorporated as associations not for pecuniary profit; all buildings actually and exclusively used in the work of associations and corporations organized exclusively for the moral and mental improvement of men, women and children, or for religious, charitable or hospital purposes, or for one or more such purposes; all buildings owned or held by an association or corporation created for the purpose of holding the title to such buildings as are actually and exclusively used in

the work of 2 or more associations or corporations organized exclusively for the moral and mental improvement of men, women and children; all buildings owned by a corporation created under or otherwise subject to the provisions of Title 15 of the Revised Statutes and actually and exclusively used in the work of one or more associations or corporations organized exclusively for charitable or religious purposes, which associations or corporations may or may not pay rent for the use of the premises or the portions of the premises used by them; the building actually occupied as a parsonage by the officiating clergymen of any religious corporation of this State, to an amount not exceeding $5,000.00; the land whereon any of the buildings hereinbefore mentioned are erected, and which may be necessary for the fair enjoyment thereof, and which is devoted to the purposes above mentioned and to no other purpose and does not exceed 5 acres in extent; the furniture and personal property in said buildings if used in and devoted to the purposes above mentioned; all property owned and used by any non-profit corporation in connection with its curriculum, work, care, treatment and study of feeble-minded, mentally retarded, or idiotic men, women, or children shall also be exempt from taxation, provided that such corporation conducts and maintains research or professional training facilities for the care and training of feeble-minded, mentally retarded, or idiotic men, women, or children; provided, in case of all the foregoing, the buildings, or the lands on which they stand, or the associations, corporations or institutions using and occupying them as aforesaid, are not conducted for profit, except that the exemption of the buildings and lands used for charitable, benevolent or religious purposes shall extend to cases where the charitable, benevolent or religious work therein carried on is supported partly by fees and charges received from or on behalf of beneficiaries using or occupying the buildings; provided, the building is wholly controlled by and the entire income therefrom is used for said

charitable, benevolent or religious purposes. The foregoing exemptions shall apply only where the association, corporation or institution claiming the exemption owns the property in question and is incorporated or organized under the laws of this State and authorized to carry out the purposes on account of which the exemption is claimed. As amended L.1941, c. 243, p. 663, § 1; L.1949, c. 85, p. 394, § 1; L.1960, c. 119, p. —, § 1.

UNITED STATES CONSTITUTION.

AMENDMENT XIV.—CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens

shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President, and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

APPENDIX C.

PETITION TO THE GLOUCESTER COUNTY BOARD OF TAXATION.

Your Petitioner, WHYY, Inc., a non-profit corporation, residing at (P. O. address) South Delsea Drive, Glassboro, New Jersey, respectfully shows, that it is the owner of a certain property situate in the taxing district of Borough of Glassboro, County of Gloucester, consisting of land and personal property necessary to operate an educational television station. Known as Map 29C, Block 427, Lot 18D, Stanger Avenue.

That said property has been assessed for the purpose of taxation for the year 1964 at a valuation of Land: $2,050; Bldg.: $30,225; Per.: $81,150 dollars at which assessment your petitioner is aggrieved, because the said assessment is in excess of its true value. Your petitioner therefore prays that the said assessment of $113,425.00 dollars for the year be reduced to the true value of the property, to wit: Petitioner claims a tax exemption as a non-profit and educational institution.

Date August 13, 1964.

(WHYY, Inc., a non-profit corporation)

(Signed) Irvin C. Ruby.

STATE OF NEW JERSEY }
COUNTY OF ATLANTIC } *ss.:*

Irvin C. Ruby, the above-named petitioner, being duly sworn according to law, on his oath says that he has read the above petition and knows the contents thereof, and that the statements set forth and contained therein are true to the best of his knowledge and belief; and that a true copy of the above petition has been served on the City Clerk of the taxing district in which the assessed property is situate.

IRVIN C. RUBY.

Sworn and subscribed before me this 30th day of June, 1965.

DOROTHY F. DE MES.
My Comm. Exp. March 30, 1970.

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(1) Where city property is the subject of appeal, care should be taken to describe the lot, block and street number, so that the same may correspond with the tax collector's books.

(2) County Board of Taxation cannot reduce valuations fixed by assessors for the purposes of equalizing assessments.

(3) The filing of an appeal does not relieve the petitioner from the payment of taxes when due.

(4) Copy of this petition must be served on the Assessor and Clerk or Attorney of the taxing district, as indicated above.

FRANK J. FERRY,
1 South New York Avenue,
Atlantic City, New Jersey.
Attorney at Law.

PETITION TO THE GLOUCESTER COUNTY BOARD OF TAXATION.

Your Petitioner, WHYY, Inc., a non-profit corporation, residing at (P. O. address) South Delsea Drive, Glassboro, New Jersey, respectfully shows, that it is the owner of a certain property situate in the taxing district of Borough of Glassboro, County of Gloucester, consisting of land necessary to operate an educational television station. Known as Map 29C, Block 427, Lot 29, Stanger Avenue.

That said property has been assessed for the purpose of taxation for the year 1964 at a valuation of $375.00 dollars at which assessment your petitioner is aggrieved, because the said assessment is in excess of its true value. Your petitioner therefore prays that the said assessment of $375.00 dollars for the year 1964 be reduced to the true value of the property, to wit: Petitioner claims a tax exemption as a non-profit and educational institution.

Date August 13, 1964.

(WHYY, Inc., a non-profit corporation)

(Signed) Irvin C. Ruby.

STATE OF NEW JERSEY }
COUNTY OF ATLANTIC } *ss.:*

Irvin C. Ruby, the above-named petitioner, being duly sworn according to law, on his oath says that he has read the above petition and knows the contents thereof, and that the statements set forth and contained therein are true to the best of his knowledge and belief; and that a true copy of the above petition has been served on the City Clerk of the taxing district in which the assessed property is situate.

IRVIN C. RUBY.

Sworn and subscribed before me this 30th day of June, 1965.

DOROTHY F. DE MES.
My Comm. Exp. March 30, 1970.

---

(1) Where city property is the subject of appeal, care should be taken to describe the lot, block and street number, so that the same may correspond with the tax collector's books.

(2) County Board of Taxation cannot reduce valuations fixed by assessors for the purposes of equalizing assessments.

(3) The filing of an appeal does not relieve the petitioner from the payment of taxes when due.

(4) Copy of this petition must be served on the Assessor and Clerk or Attorney of the taxing district, as indicated above.

FRANK J. FERRY,
1 South New York Avenue,
Atlantic City, New Jersey,
Attorney at Law.

JUDGMENT

OF

GLOUCESTER COUNTY BOARD OF TAXATION.

Woodbury, N. J., October 27, 1964.

FRANK J. FERRY, Esq. (for WHYY Inc.) Suite 503, Schwehm Bldg., Atlantic City, New Jersey.

The Gloucester County Board of Taxation, sitting as a Board of Appeals, considered your Petition of Appeal for a reduction of the assessed valuation on property located in the Taxing District of Borough of Glassboro, County of Gloucester and State of New Jersey, on the 8th day of October, 1964.

After having made diligent inquiry and hearing the evidence presented, relative to the value of said property, it has been Adjudged, Decreed and Ordered by the said County Board of Taxation that your Petition of Appeal for a reduction in valuation be denied and the valuation as assessed be the same, on Map 29-C, Block 427, Lot 18-D, Map 29-C, Block 427, Lot 29, be denied and the assessment to be the same.

Very truly yours,

GLOUCESTER COUNTY BOARD OF TAXATION,

VERA A. LUTZ, *Secretary.*

(Seal)

PETITION TO THE DIVISION OF TAX APPEALS, IN THE DEPARTMENT OF THE TREASURY.

Your Petitioner, WHYY a nonprofit corporation residing at (P. O. address) South Delsea Drive, Glassboro, New Jersey in the County of Gloucester and State of New Jersey, respectfully shows that it is the owner of certain property situated in the taxing district of Borough of Glassboro, County of Gloucester consisting of Real Estate |X|, Personalty |X|, Land and equipment necessary to operate a non-profit educational television station and known as Block: 427, Lot: 18D, St. or Ave: Strange Avenue.

That said property has been assessed for the purpose of taxation for the year 1964 at a valuation of:

*Land:	$ 2,050.00
Improvements:	$ 30,225.00
Personalty:	$ 81,150.00
Total	$113,425.00

at which assessment your petitioner is aggrieved, because the said assessment is in excess of its true value. Petitioner claims a tax exemption pursuant to N. J. S. A. 54:4-3.6.

That an appeal from said assessment has been filed with the Gloucester County Board of Taxation, which appeal said Board disposed of as follows:

	Land:	$ 2,050.00
	Improvements:	$ 30,225.00
County Board Action:	Personalty:	$ 81,150.00
	Total	$113,425.00

Your petitioner, therefore, prays that said assessment of **Land, $2,050.00, Impt., $30,225.00; Pers., $81,150.00; Total, $113,425.00, for the year 1964, be considered as tax exempt pursuant to N. J. S. A. 54:4-3.6.
Dated November 30, 1964.

(Signed) IRVIN C. RUBY, *Agent.*

*This amount should be the original valuation of the property, as it appears on the tax bill.

**This amount should be the valuation to which the assessment was changed by the County Board of Taxation, on appeal.

***Please indicate which item or items you are appealing.

****List any other reasons upon which claim for reduction is based.

X List any other relief sought.

Complete information must be given as set forth on the reverse side of this petition.

PETITION TO THE DIVISION OF TAX APPEALS, IN THE DEPARTMENT OF THE TREASURY.

Your petitioner, WHYY, a non-profit corporation residing at (P. O. address) South Delsea Drive, Glassboro, New Jersey in the County of Gloucester and State of New Jersey, respectfully shows that it is the owner of certain property situated in the taxing district of Borough of Glassboro, County of Gloucester consisting of Real Estate |X|, Personalty |X|, Land and equipment necessary to operate a non-profit educational television station and known as Block: 427, Lot: 29, St. or Ave.: Strange Avenue.

That said property has been assessed for the purpose of taxation for the year 1964 at a valuation of:

*Land:	$	375.00
Improvements:	$	
Personalty:	$	
Total	$	375.00

at which assessment your petitioner is aggrieved, because the said assessment is in excess of its true value. Petitioner claims a tax exemption pursuant to N. J. S. A. 54:4-3.6.

That an appeal from said assessment has been filed with the Gloucester County Board of Taxation, which appeal said Board disposed of as follows:

	Land:	$	375.00
	Improvements:	$	
County Board Action:	Personalty:	$	
	Total	$	375.00

Your petitioner, therefore, prays that said assessment of **Land, $375.00 Impt., $; Pers., $; Total, $, for the year 1964, be considered as tax exempt pursuant to N. J. S. A. 54:4-3.6.,

Dated November 30, 1964.

(Signed) IRVIN C. RUBY, *Agent.*

*This amount should be the original valuation of the property, as it appears on the tax bill.

**This amount should be the valuation to which the assessment was changed by the County Board of Taxation, on appeal.

***Please indicate which item or items you are appealing.

****List any other réasons upon which claim for reduction is based.

X List any other relief sought.

Complete information must be given as set forth on the reverse side of this petition.

EXHIBIT "A".

AFFIDAVIT.

STATE OF NEW JERSEY }
COUNTY OF ATLANTIC } *ss.:*

I, IRVIN C. RUBY, being of full age, duly sworn according to law upon my oath, depose and say:

1. I am the Director of Business Affairs and assistant to the General Manager of WHYY, INC., and, in the course of my duties, I am responsible for the general management and the over-all fiscal operation of this television broadcasting station. In this capacity, I am required to report to the Board of Directors and submit periodic financial statements, regarding the operation of this station.

2. WHYY, INC., was originally incorporated in the State of Pennsylvania, and was formed as a non-profit corporation to provide cultural, recreational, and educational radio and television broadcasts within Pennsylvania, New Jersey, and Delaware, which area has eight million (8,000,000) potential views and listeners. WHYY, INC., is registered in the State of New Jersey, as a foreign, non-

profit corporation, with a registered office at the New Jersey Corporation Guarantee and Trust Company, located at 709 Market Street, Camden, New Jersey.

3. The Board of Directors of this corporation consists of five (5) school directors, four (4) institutional directors, and thirteen (13) community leaders, on which the State of New Jersey is represented by: Mrs. Ruth Mancuso, who is associated with the New Jersey State Educational System, and resides at 411 Swarthmore Road, Glassboro, New Jersey; Dr. Anthony R. Catrambone, Superintendent of the Camden City School System; and Dr. Granville H. Thomas, Superintendent of the Salem City School System.

4. Pursuant to a revenue ruling of the United States Government, Internal Revenue Service, this corporation has been declared exempt from Federal Income Taxes, as it has been shown to the Government that the corporation was organized exclusively for charitable and education purposes. In addition, the Board of Revision of Taxes, in the City of Philadelphia, has declared the office building and facilities, at 5448 Market Street, Philadelphia, to be exempt from real estate taxes. The City of Wilmington has also exempted this corporation from paying the city license fee, due to the corporation's non-profit activities. The Department of Revenue of the Commonwealth of Pennsylvania has also granted to this corporation the authority to purchase tangible personal property tax free, under the applicable provisions, pertaining to non-profit corporations. (See Exhibit "A" for documentation.)

5. WHYY, Inc., has registered with the Secretary of State of New Jersey, and has filed its annual report with that office, which makes the corporation subject to the laws of the State of New Jersey, and entitled to all the rights and privileges of a duly licensed corporation of this state.

6. The corporation has been licensed by the Federal Communications Commission to operate Channel 12 as a

non-commercial, educational station. This precludes any possibility of taking commercial advertising on the station itself and, thus, eliminates any material gain. This makes us dependent upon school systems and voluntary contributions to operate the station. This station is in existence because of contributions made by the Board of Education of the City of Philadelphia, totaling FIVE HUNDRED THOUSAND DOLLARS ($500,000.00), per year, and the contributions of the City of Philadelphia, of TWO HUNDRED AND FIFTY THOUSAND DOLLARS ($250,000.00), per year. In addition, we receive approximately ONE HUNDRED THOUSAND DOLLARS ($100,000.00) from the Tri-State Instructional Council who, together with the Board of Education of Philadelphia, coordinates the classroom instruction that is aired on this station.

7. The instructors, who act as professors on the programs, are furnished principally by the Board of Education of the City of Philadelphia; but, in specialized cases, such as the French Department, the instructors are furnished by the Tri-State Instructional Council. Their services are free to the corporation, their salaries having been absorbed by the school systems involved.

8. A full statement of programming offered by the station is incorporated in our brochure attached hereto, as Exhibit "A"; but, more closely associated with the State of New Jersey, we have broadcast "Profiles of New Jersey", which is a weekly report by Governor Hughes, of New Jersey. During the past two years, we have broadcast several agricultural programs from Rutgers University and, also, programs from Glassboro State College, both of which associations we intend to encourage by continued participation in our educational programming.

9. In addition to the educational programming offered, there are available numerous cultural programs, which consist of some of the following types of broadcasts: Performances from the Academy of Music, in Philadelphia; ballet and modern dance recitals; many full length operas,

such as Dido and Aenas, La Traviata, Otella, and Tosca; as well as the popular world of drama—every major dramatist from Shakespeare to Samuel Becket has been seen on WHYY-TV. We also broadcast the controversial show, produced by David Suskin, entitled "Open End".

10. Our facilities in New Jersey consist of fifty acres of ground, in the Borough of Glassboro, on which we have erected a transmittal building and a one thousand foot guide tower, which are the heart of our entire broadcasting system.

11. On November 7, 1963, we were represented by Alvin E. Granite, Esquire, who submitted a letter to the Council, requesting an exemption on our behalf, pursuant to R. S. 54:4-3.6; a copy of this letter is attached hereto as Exhibit "B". On November 12, 1963, the Glassboro Council brought this before the entire government body; and it was referred to their then Borough Attorney, Alvin Shpeen, Esquire, for study, which report of said meeting appeared in the Woodbury Daily Times, on November 13, 1963 (copy of which is attached hereto as Exhibit "C"). In view of this situation, we were under the impression that the necessary administration procedures had been followed to properly request a tax exemption from the Borough of Glassboro.

12. This Affidavit is made to induce the Division of Taxation to grant a tax exemption to Station W. H. Y. Y., Inc., pursuant to N. J. S. A. 54:4-3.6.

Irvin C. Ruby,
Irvin C. Ruby.

Subscribed and sworn to before me this 18th day of June, 1965.

Edith C. R. Plasket,
Notary Public of the State of New Jersey.

(Seal)

My commission expires 6/25/66.

EXHIBIT "B".

WOODBURY DAILY TIMES
Established 1897

Woodbury, N. J., Wednesday, November 13, 1963

WHYY REQUESTS GLASSBORO FOR TAX EXEMPTION

Glassboro Council last night received a request from Attorney Alvin Granite on behalf of Station WHYY (Channel 12) for exemption from further taxes since it is an educational, non-profit corporation.

The station maintains a transmitter and building on a 26-acre site in Glassboro. The matter was referred to Borough Attorney Alvin Shpeen for study.

Council approved an application for a billiard license by Garden Lanes Bowling Center on S. Delsea Dr. The new center will hold its grand opening at 3 P. M. this Saturday. Ed Gress is general manager.

Wilbur Burt of Ellis Mill Rd. was appointed superintendent of the highway department effective November 16, to replace William Carey, who recently resigned.

Permission was granted to the management of the Little

(Continued to Page 16, Col. 8)

WHYY REQUESTS

(Continued from Page One)

League baseball team to hold a circus on the Glassboro Theater grounds, on or about April 28.

Bids for a water line on Academy St. will be received at a special meeting on December 2 at 8 P. M.

Council approved the installation of vapor lights at Oakview Ave. and Church St., near the new St. Bridget's R. C. Church.

A letter received from Norman R. Evans, electrical contractor from Pitman, calling council's attention to the electrical contractors' licensing act of 1962, was referred to Arthur Glass, chairman of the fire, light and welfare committee.

Borough Hall will be closed at 3:30 P. M. on November 31 so employees may attend the N. J. League of Municipalities convention at Atlantic City.

EXHIBIT "C".

November 7, 1963

Mayor and Borough Council
Municipal Building
Glassboro, New Jersey

Gentlemen:

Kindly be advised that I represent Station WHYY, which recently purchased a tract of land within the confines of the Borough of Glassboro, and has erected thereon a TV tower and a building, or buildings. The purpose of this letter is to request that you adopt a Resolution exempting these premises from taxation in accordance with R. S. 54:4-3.6.

WHYY, Inc. is a corporation of the Commonwealth of Pennsylvania, authorized to do business in the State of New Jersey, and is formed as a non-profit, educational corporation.

I am enclosing herewith, in support of this request, a copy of the Annual Report of the corporation filed with the Secretary of State of New Jersey, together with a copy of the Charter, both of which constitute proof of its existence as a non-profit educational corporation.

It is my understanding that the taxes have been paid on the premises for the year 1963 so that our request should be in regard to any added assessment for this year and for future years.

If you have any questions, please do not hesitate to contact me. I would appreciate it if you would inform me when the Resolution has been adopted.

Very truly yours,

ALVIN E. GRANITE.

AEG:s
cc—Alvin G. Shpeen, Esq., Solicitor

OPINION OF ANTHONY H. LARIO, PRESIDENT OF DIVISION OF TAX APPEALS.

Appearances:

FRANK J. FERRY, Esquire, on behalf of Petitioner.
MARTIN F. CAULFIELD, Esquire, on behalf of Respondent.

LARIO, President.

Petitioner appeals from a judgment of the Gloucester County Board of Taxation which denied petitioners' application for a tax exemption on premises owned by it and situated within the Borough of Glassboro.

Petitioner is a corporation of the Commonwealth of Pennsylvania with its principal office located at Philadelphia, Pennsylvania. It was formed as a non-profit corporation to provide cultural, recreational, and educational radio and television broadcasts in the Delaware Valley area.

It has been licensed by the Federal Communications Commission to operate a television station to telecast over Channel 12 as a non-commercial educational station.

Petitioner has registered with the State of New Jersey as a Foreign Non-Profit Corporation.

In connection therewith, it operates its studios in Philadelphia, Pennsylvania and Wilmington, Delaware, and owns a transmitting station, the premises under appeal. The land was purchased for $30,000 and equipment for all three locations was purchased at a price of $403,225.85.

Petitioner has been declared tax exempt by the U. S. Internal Revenue Service and the Commonwealth of Pennsylvania.

Petitioner objects that the County Board should have allowed its request for tax exempt status under the provisions of N. J. S. A. 54:4-3.6. No objection has been raised to the valuation of the assessment.

Petitioner and Respondent have submitted stipulations of fact, which have been marked in evidence as Exhibit A, which consists of an affidavit by Irving C. Ruby, Director of Business Affairs, and Assistant to the General Manager of WHYY, Inc., and a brochure, marked Exhibit B, which sets forth the photostatic copy of the Corporation and its by-laws, and other information concerning its tax exempt status, and its programming.

Respondent denies that the Petitioner comes within the provisions of the foresaid statute, and in addition sets up the defense that Petitioner has failed to make timely application for tax exemption for the tax year 1964, by reason of its failure to comply with the provisions of N. J. S. A. 54:4-44. As of November 1, 1963, Petitioner had failed to file a claim for tax exemption with the Borough for the tax year 1964.

N.J. S. A. 54:4-3.6 provides for the exemption of property for educational, religious and charitable organizations. The last sentence of the statute reads as follows:

> "The foregoing exemptions shall apply only where the association, corporation or institution claiming the exemption owns the property in question and is incorporated or organized under the laws of this State and authorized to carry out the purposes on account of which the exemption is claimed."

In response thereto Petitioner claims although it is incorporated under the laws of Commonwealth of Pennsylvania, that since it has registered as a foreign Corporation with the State of New Jersey, it qualifies for the exemption claimed.

In construing the statute in question, the taxpayer alleges that since under N. J. S. A. 14:15-1 it is permitted to purchase and convey real estate; and since, under N. J. S. A. 14:15-2, as a foreign corporation doing business in this state, it is subject to the laws of this state, therefore, it should be also entitled to any exemptions that a New Jersey corporation would be entitled to receive.

Statutes granting exemption from taxation are strictly construed against anyone claiming exemption thereunder. *Princeton Tp., Mercer County v. Tenacre Foundation*, 69 N. J. Super. 559 (1961).

The burden of proving tax-exempt status is upon claimant. *Princeton U. Press v. Borough of Princeton*, 35 N. J. 209 (1961).

This judicial attitude is but a facet of the rule of construction that all doubts are resolved against those seeking the benefit of a statutory exemption which in turn is based upon the fundamental principle of equality of the taxation burden. *Township of Teaneck v. Lutheran Bible Institute*, 20 N. J. 86 (1955).

In *Township of New Providence v. Lions Club of Plainfield*, 17 A. 2d 548, 19 N. J. Misc. 103 (1941), where a ques-

tion arose as to who actually held title, this Division held, "If, on the other hand the Boy Scouts of America is the exemption claimant, the claim is fatally defective for the reason that the organization was incorporated, not under the laws of this State, as required by the statute, but under the statutes enacted by Congress for the formation of corporations in the District of Columbia."

The statute in question is clear and unambiguous as regards the situs of the corporation claiming the exemption. It clearly establishes that the claimant must be "incorporated or organized under the laws of this State".

The use of the word "organized" relates solely to the recognition by the Legislature that certain associations may not be actually incorporated but may be "organized" under the laws of the State of New Jersey and entitled to tax exemption.

The statute cannot be construed to include within the meaning of "organized", a foreign corporation authorized to do business in this state. If the subjects of exemption are to be enlarged, it is for the Legislature to bestow the privilege. *Twp. of Teaneck v. Lutheran Bible Institute, supra.*

Since petitioner is not incorporated under the laws of the State of New Jersey, its claim for exemption is denied.

JUDGMENT.

A duly verified appeal in writing having been filed with the Division of Tax Appeals, by WHYY, Inc., in which it is alleged that an injustice has been done the said complainant by the assessment of certain property for taxation for the year 1964, located at Borough of Glassboro in the County of Gloucester, consisting of Land, building and personalty known as (land and equipment necessary to operate a non-profit educational Television Station) Blk. 427, Lot 18D, Strange Ave., and that said property is assessed higher than the true value thereof;

After hearing evidence produced on the part of said complainant, and the said respondent, and the argument of Frank J. Ferry, Atty. for the complainant, and Martin F. Caulfield, Atty. for the respondent, and after considering the same, it is on this 17th day of November, nineteen hundred and sixty-five, at a session of the Division of Tax Appeals, ORDERED, ADJUDGED and DECREED, under and by virtue of the authority conferred by law, that the action of the County Board of Taxation in denying the exemption on the assessment of $113,425, being $2,050 on land, $30,225 on improvements and $81,150 on personalty levied for the year 1964 on the above described property be affirmed and the appeal therefrom dismissed.

JUDGMENT.

A duly verified appeal in writing having been filed with the Division of Tax Appeals, by W. H. Y. Y., Inc., in which it is alleged that an injustice has been done the said complainant by the assessment of certain property for taxation for the year 1964, located at Borough of Glassboro in the County of Gloucester, consisting of Land and known as Block 427, Lot 29, Strange Ave., and that said property is assessed higher than the true value thereof;

After hearing evidence produced on the part of said complainant, and the said respondent, and the argument of Frank J. Ferry, Atty. for the complainant, and Martin F. Caulfield, Atty. for the respondent, and after considering the same, it is on this 17th day of November, nineteen hundred and sixty-five, at a session of the Division of Tax Appeals, ORDERED, ADJUDGED and DECREED, under and by virtue of the authority conferred by law; that the action of the County Board of Taxation in denying the exemption on the assessment of $375. on land levied for the year 1964 on the above described property be affirmed and the appeal therefrom dismissed.

NOTICE OF APPEAL.

NOTICE is hereby given that WHYY, INC., petitioner-appellant, appeals to the Superior Court of New Jersey, Appellate Division, from the final judgment entered by the Division of Tax Appeals, Department of the Treasury of the State of New Jersey, rendered on the 17th day of November, 1965, under docket numbers 2249D, and 2250D, for properties designated as Block 427, Lot 18D, and Block 427, Lot 29, affirming the Gloucester County Board of Taxation, in denying the petitioner-appellant's claim for a tax exemption for said properties.

FRANK J. FERRY,
Attorney for Petitioner-Appellant.

AFFIDAVIT.

STATE OF NEW JERSEY }
COUNTY OF ATLANTIC } *ss.:*

SUSAN T. BOAZ, being duly sworn according to law upon her oath deposes and says:

1. I am a secretary in the law offices of FRANK J. FERRY, Esquire, located at 1 South New York Avenue, Atlantic City, New Jersey; said FRANK J. FERRY, Esquire, is the attorney for the petitioner-appellant in the captioned matter.

2. Pursuant to instructions from FRANK J. FERRY, Esquire, I did serve a copy of a Notice of Appeal to the Superior Court of New Jersey, Appellate Division, from the Judgment of the Division of Tax Appeals, of November 17, 1965, under docket numbers 2249D, and 2250D, by mail-

ing the same, certified mail, return receipt requested, by depositing same in a United States mail depository, located at New York and Atlantic Avenues, Atlantic City, New Jersey, on December 10, 1965, with postage prepaid thereon, to the following persons and agencies:

(a) Thomas F. Carlin, Secretary
Department of the Treasury
Division of Tax Appeals
State House Annex
Trenton, New Jersey

(b) Arthur J. Sills, Esquire
Attorney General of New Jersey
State House
Trenton, New Jersey

(c) Vera A. Lutz
Gloucester County Board of Taxation
Woodbury City Hall
Woodbury, New Jersey

(d) Thomas Giunta, Secretary
Glassboro Board of Assessors
Glassboro City Hall
Glassboro, New Jersey

(e) Martin F. Caulfield, Esquire
Solicitor for the Borough of Glassboro
Law Offices
49 Delaware Street
Woodbury, New Jersey

SUSAN T. BOAZ.

Sworn and subscribed to before me this 18th day of December, 1965.

/s/ EMMA B. KUEHNLE,
A Notary Public of the State of New Jersey.

APPENDIX D.

SUPREME COURT OF NEW JERSEY

DOCKET No. A-5287

WHYY, INC.,
Petitioner-Appellant

v.

BOROUGH OF GLASSBORO,
Respondent-Appellee,

and

DIVISION OF TAX APPEALS OF THE DEPARTMENT OF THE TREASURY OF THE STATE OF NEW JERSEY,
Respondent.

Supplementary Factual Statement of the Nature and Extent of the Charitable Educational Benefits, Bestowed Within the Borders of New Jersey by WHYY, Inc. Television and Radio Broadcasts.

GROVER C. RICHMAN, JR.,
RICHMAN, BERRY & FERREN,
1207 Wilson Building,
Camden, New Jersey,
FRANK J. FERRY,
503 Schwehm Building,
Atlantic City, New Jersey,
Attorney for Petitioner-Appellant.

SUPREME COURT OF NEW JERSEY

DOCKET No. A-5287

WHYY, INC.,
Petitioner-Appellant

v.

BOROUGH OF GLASSBORO,
Respondent-Appellee,

and

DIVISION OF TAX APPEALS OF THE DEPARTMENT OF THE TREASURY OF THE STATE OF NEW JERSEY,
Respondent.

SUPPLEMENTARY FACTUAL STATEMENT OF THE NATURE AND EXTENT OF THE CHARITABLE EDUCATIONAL BENEFITS, BESTOWED WITHIN THE BORDERS OF NEW JERSEY BY WHYY, INC. TELEVISION AND RADIO BROADCASTS.

WHYY, Inc. (the "Corporation") is licensed by the Federal Communications Commission (the "Commission") to engage in non-commercial television and radio broadcasting of educational programs. Non-commercial educational licenses are authorized under regulations adopted by the Commission acting under provisions of the Communications Act of 1934, 47 U. S. C. §§ 301 et seq.

Such broadcasting covers certain areas for each of the respective licenses. Exhibit "A-1" and "A-1(a)" show the coverage area for WHYY, Channel 12 (very high frequency) as provided by the main transmitter located at Glassboro, New Jersey, and supplemented by a "translator" at Milton, Delaware; so that the combined effect of the transmitter and "translator" is to provide complete

coverage for the entire State of Delaware, as well as the remaining area shown on Exhibit "A-1". Exhibit "A-2" shows the coverage area of WUHY-TV, Channel 35 (ultra high frequency) and Exhibit "A-3" shows the coverage area for WUHY radio (FM 90.9 mc.).

The inner circles shown on Exhibits "A-1", "A-2" and "A-3" indicate the so-called "Grade A" coverage area; the outer circles show the limits of the "Grade B" coverage area. In general, and in non-technical terms, the term "Grade A" coverage area means the area in which an excellent picture or signal can be received under normal conditions.

The dates on which operations were begun under the respective licenses are as follows:

WUHY Radio	December 14, 1954
WUHY-TV, Channel 35	September 12, 1963
WHYY-TV, Channel 12	September 12, 1863

Although all of the radio and television broadcasting activities by the Corporation are intended to make a substantial and significant contribution to the educational, cultural and intellectual life in the area respectively served, by far the largest part of its audience consists of viewers of Channel 12 programs, which are sent out from the transmitter located at Glassboro, New Jersey. The taxes involved in this litigation are sought to be imposed upon real and personal property devoted exclusively to Channel 12 transmission. The Corporation does not own any other property located within the State of New Jersey.

The coverage area for Channel 12 (Exhibit "A-1"), like the coverage areas for Channel 35 and the radio station, is prescribed and bounded by the terms of the Commission license. Although Channel 12 is assigned by the Commission to Wilmington, Delaware, and although its programs mostly originate in Wilmington or Philadelphia studios, they are actually broadcast from the Glassboro transmitter. The location of that transmitter, together

with the power of the signal, determine the area reached by the broadcasting; the coverage area is not physically affected or influenced by the place where the programs originate. As Exhibit "A-1" shows, the Glassboro transmitter is located at the center of the Channel 12 coverage area. The Glassboro site was prescribed by the Commission, and the transmitter may not be relocated without its permission.

The Commission licenses are granted and renewed for three-year periods. In 1966, the Channel 12 license was renewed by the Commission "without comment"—i.e., without adverse criticism or cautionary remarks.

Any account of the overall significance of the work of the Corporation, as it relates to the State of New Jersey, must consist primarily of a description of the general activities of the Corporation. Since those activities are concentrated on broadcasting of television and radio programs within its service area, those activities confer a benefit on the segment of New Jersey included within that service area in the same manner as on the entire area covered by the broadcasts.

The portion of the Channel 12 "Grade A" service area lying within the boundaries of the State of New Jersey, from a geographical standpoint, represents the largest part of the entire "Grade A" service area. Although precise population figures are not available, the Corporation estimates the total population within reach of its Channel 12 signal is about 8,000,000, which is estimated to be distributed within the various state segments as follows:

New Jersey	29.5%
Pennsylvania	61.5%
Delaware	7.5%
Maryland	1.5%

Legal Status and Summary of Organization.

The Corporation was granted Articles of Incorporation by the Court of Common Pleas of Philadelphia County No. 3, December Term, 1952, No. 8216, under the provisions of

the Pennsylvania Non-Profit Corporation Law, 15 Purd. Pa. Stat. Ann. §§ 2851-1 et seq. It has qualified as a non-profit corporation in New Jersey.

By the terms of its Articles, and the statute under which it was organized, the Corporation is not permitted to engage in any activities which enure to the profit or gain of any private corporation or individual. It has no stockholders and can pay no dividends. The Internal Revenue Service has determined that the Corporation is an "exempt organization", organized and operated exclusively for charitable and educational purposes under Section 501-(c)(3) of the Internal Revenue Code. As a consequence of that ruling, the Corporation is exempt from the requirement of filing income tax returns or paying income tax to the Federal Government. Contributions to the Corporation are deductible as charitable contributions for Federal income tax purposes. The larger part of its real and personal property is located at its offices and studios in Philadelphia, and no taxes have been collected, or sought to be collected, on any of its property in Pennsylvania, either by State or local authorities. Except for trifling sums, which the Corporation regards as de minimis, no taxes have been collected or sought to be collected by any state or local authorities in Delaware.

The Corporation is governed by a Board of Directors, currently twenty-seven in number. A list of the current Directors is attached as Exhibit "B". The Directors receive no pay for their services, and are chosen from prominent citizens whose business or professional activities are centered upon various communities within those parts of Pennsylvania, New Jersey and Delaware included within the service area of the Corporation. It employs approximately one hundred persons.

Sources of Funds.

As a non-commercial educational licensee of the Commission, the Corporation is prohibited by Federal statute and regulations from accepting advertising or selling time.

Its operating and capital funds, and property, are derived from the following principal sources:

1. *Contract payments* by various school districts and public school agencies, which contribute to the cost of providing broadcast facilities for instructional programs viewed in classrooms, for elementary, junior high and high school students. Some of the funds from these sources are also used to finance certain supplementary instructional activities, such as adult education and teacher education programs (see summary of programs below).

2. *Public subsidies* by state, county and local government agencies.

3. *Contributions* by charitable foundations, business corporations, and civic associations.

4. *Contributions* by the viewing public.

5. *Gifts of real and personal property* by public and private donors, for use by the Corporation in carrying on its acivities.

6. *Programs* contributed for showing, or subsidized, by various public and private agencies.

The sources of WHYY's total receipts for capital and operating expenses for 1966 may be classified as follows:

Payments by school agencies to defray the costs of instructional broadcasts	$ 530,000.00
Contributions by the viewing public	230,000.00
Co..tributions by foundations	63,000.00
Contributions by business and industry	40,000.00
Grants by municipal government	265,000.00
Grants by state government	140,000.00
Reimbursement of costs for special projects	135,000.00
Other	37,000.00
TOTAL	$1,440,000.00

In addition to funds from the above sources, in 1966 the Corporation received substantial sums from the Ford Foundation under a matching grant program; and has also received payments from the Federal Government, disbursed through the Department of Health, Education and Welfare, under the Educational Television Facilities Act of 1962, 47 U. S. C. §§ 390 et seq., on account of a total grant which will total $652,390.00.

The operating and capital budget for 1967 is approximately $1,800,000.00.

Programs.

WHYY'S programs come within two general categories:

1. "In-School" and related teaching programs, shown from about 9:00 A. M. to approximately 4:00 P. M. each weekday, plus some evening and Saturday programs devoted to adult and teacher instruction.

2. "General" programming on weekday and Sunday afternoons and evenings.*

The "in-school" phase consists of elementary and secondary systematic teaching programs, the contents (or curriculum) of which are planned by the School District of Philadelphia and the Tri-State Instructional Broadcasting Council, a non-profit organization composed of educators and representatives of school districts in Pennsylvania, New Jersey and Delaware. The programs are actually prepared and presented by school teachers employed and paid by the various participating school districts and agencies. The curricula are designed to fit prescribed courses presented by the subscribing school districts. Teacher training programs are also developed for broadcasting by the Council, particularly in the language arts, science and mathematics, areas in which teacher training programs are

* At present, the Corporation does not offer any general Saturday programs; it hopes to expand its broadcast schedule to cover all normal viewing hours when it is financially able to do so.

deemed particularly beneficial because of rapid changes in teaching methods and aids.

This instructional programming is broadcast to participating schools and school districts in the Tri-State area for in-class instruction. The participating schools and school districts pay a yearly fee of $1.00 per student served. It should be noted, however, that since WHYY broadcasts on a standard VHF channel, the "in-school" programs are available to non-subscribers as well as subscribers. Parents of participating students may also view the programs on sets at their homes.

a. *New Jersey Participation*—during the school year 1966-67, seven New Jersey school districts,* or agencies, representing approximately 23,900 children, participated in WHYY's "in-school" programming. Three additional districts, Willingboro, Cape May City and Stratford, have contracted to participate during school year 1967-68. Negotiations are currently underway with one other, the Hammontown School District. Discussions have also been held in recent months between the Tri-State Council and the New Jersey State Department of Education concerning development of a plan to provide "in-school" programming for all eight New Jersey Counties within the WHYY broadcast area.**

At present, Dr. Anthony R. Catrambone, Superintendent of Schools, Camden, New Jersey, and The Honorable

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* (1) Camden City Public Schools
(2) Camden City Parochial Schools
(3) Greenbank School, Washington Township Board of Education
(4) Bridgeton Elementary Schools
(5) Greenwich Township Schools
(6) Wenonah Borough Public Schools
(7) Divine Word Seminary

** Camden, Gloucester, Cumberland, Salem, Mercer, Atlantic, Cape May and Burlington.

Arthur J. Sills, Attorney General of the State of New Jersey, are members of the Board of Directors of WHYY, Inc.; John T. Dorrance, Jr., Chairman of the Board of Campbell Soup Company, is also a member.

Arthur Burnham, Superintendent of Schools, Greenwich Township, Gibbstown, New Jersey, and Dr. Granville Thomas, Superintendent of Schools, Salem, New Jersey, are members of the Board of Directors of the Tri-State Council. Dr. Thomas has been a member of the Tri-State Board since its inception and has also served on the Board of WHYY, Inc.

"General" Programming.

WHYY's general programming, which is broadcast weekdays from 5:00 P. M. to 11:30 P. M., is devoted to programs of a cultural, informational and educational nature.

The prime source of this programming is the National Educational Network (NET), a non-profit corporation engaged in the production and distribution of live, film and video tape cultural and educational programs. As a contract affiliate of NET, WHYY, Inc. receives five hours per week of original programming as well as access to NET's extensive film and video tape library. Through this affiliation, WHYY is able to present informative and timely programs dealing with such economic, social and political programs as the "war" on proverty, the United Nations, the John Birch Society, a study of the work of the 89th Congress and medical care for the aged. In the cultural field, WHYY broadcasts opera, symphony, modern dance and drama. In the educational or informational area, programs deal with such subjects as astronomy, viruses, and French cooking.

Other programming sources are the Eastern Educational Network (EEN), independent producers and, occasionally, commercial producers whose programs are shown without advertising.

An important and growing source of programming is local production by WHYY of programs of importance or

interest to the Tri-State area. Opera performances from the Philadelphia Academy of Music, live performances of the Moorestown, New Jersey Theatre and the Wilmington opera, and discussions of major issues by political, civic and educational leaders of the Tri-State area are examples of WHYY's local programming. In addition, WHYY devotes two and one-half hours per day to in-depth Tri-State news coverage, often reporting subjects of local interest passed over by the commercial stations. Sample press clippings from various local newspapers in New Jersey are attached (Exhibit "C") as evidence of the widespread interest shown in the programs carried by Channel 12.

Because WHYY is not compelled to choose its programs because of commercial considerations, it is able to show certain programs which deal with local and state problems, politics and affairs. Examples of those focusing on matters of particular interest to New Jersey residents are:

Profile of New Jersey, broadcast September 18, 1964 to March 12, 1965, twenty-four programs, thirty minutes each;

Science and Argiculture, produced in cooperation with Rutgers University, broadcast September 16, 1963 to June 1, 1964, thirty-five programs, thirty minutes each.

So You Want To Go To College, produced in cooperation with Glassboro State College, broadcast Fall, 1963, Spring, 1964, January and February, 1966, each series consisting of eight thirty minute programs.

New Jersey Chamber of Commerce Annual Washington Day Dinner, broadcast February 5, 1967, two hours.

New Jersey Chamber of Commerce Annual Washington Day Dinner, broadcast February 5, 1967, two hours.

The New Jersey Bond Issue, broadcast September 16, 1963 and September 23, 1963.

Metro Spect, Paul Ylvisaker, A Profile, interview with the newly designated Commissioner for the Department of Community Affairs for New Jersey, to be broadcast June 1, 1967.

A complete list of New Jersey oriented programs is attached as Exhibit "D".

A complete schedule of all of the Tri-State instructional programs will be found on page 22 of "The Broader View" for May, 1967 (Exhibit "E"), a program periodical booklet distributed by the Corporation to the public. It also contains a summary of general evening and Sunday program highlights (pages 20, 21), and a complete schedule of daily radio programs (pages 9-16).

The Carnegie Commission on Educational Television has recently made an intensive study of the history and present status of the 120 or more stations which provide the local outlets for the national system of non-commercial educational television. The Report of the Carnegie Commission was recently published under the title "Public Television: A Program for Action"; a copy is attached as Exhibit "F". A capsule summary of the findings and recommendations of the Commission will be found on pages 3 to 11 of the Report.

The discussion and findings contained in the Report are generally applicable to the Corporation, and should be extremely helpful in any overall appraisal of the public service provided by the Corporation to the communities included within its service area.

Throughout the Report, the Carnegie Commission manifests deep concern over the most crucial problem faced by stations which, like Channel 12, are not operated as part of, or subsidized by, some larger parent institution. That problem is the problem of how such stations can obtain the financial means to enable them to survive and prosper. While the Commission's recommendations as to the best

method of providing such financing have aroused considerable discussion and controversy, the following conclusion, expressed in the introductory note facing the fly-leaf of the Report, has received universal approval and may be regarded as non-controversial:

> "The Carnegie Commission on Educational Television has reached the unqualified conclusion that a well-financed, well-directed educational television system, substantially larger and far more pervasive and effective than that which now exists in the United States, must be brought into being if the full needs of the American public are to be served. This is the central conclusion of the Commission and all of its recommendations are designed accordingly. The firm base upon which educational television is founded, and the potentiality it possesses to serve the general welfare, warrant the investment of public funds and public energies; the public interest in its expansion is unmistakable. . . ."

COUNTY OF PHILADELPHIA
COMMONWEALTH OF PENNSYLVANIA } *ss:*

WARREN KRAETZER, being duly sworn according to law, deposes and says that he is the Executive Vice-President and General Manager of WHYY, Inc.; that he is authorized to and does make this statement on behalf of said Corporation; and that the facts set forth herein are true and correct to the best of his knowledge, information and belief.

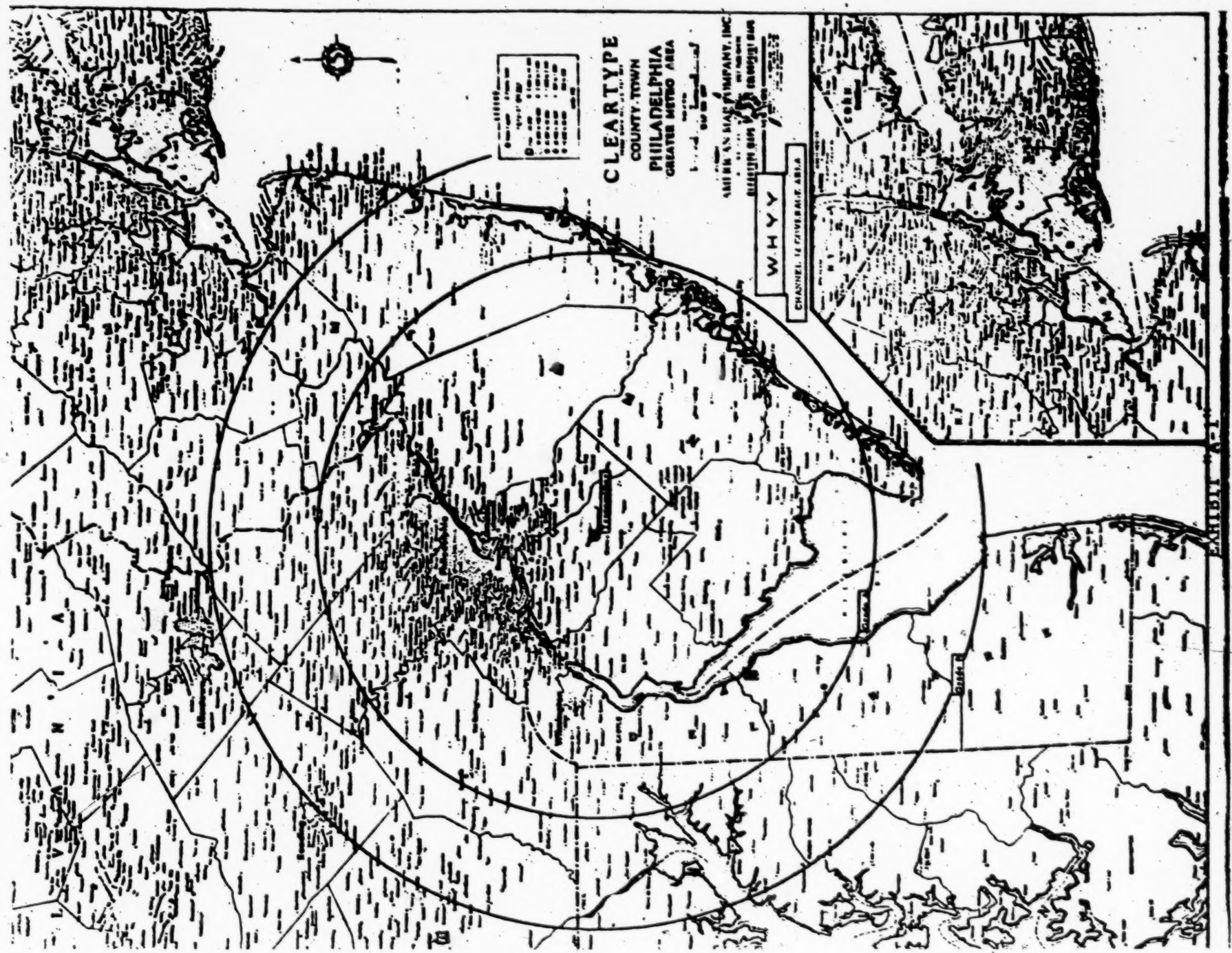
WARREN A. KRAETZER,
Warren Kraetzer.

Sworn to and subscribed before me this 18th day of May, 1967.

LEWIS P. MARX,
Notary Public.

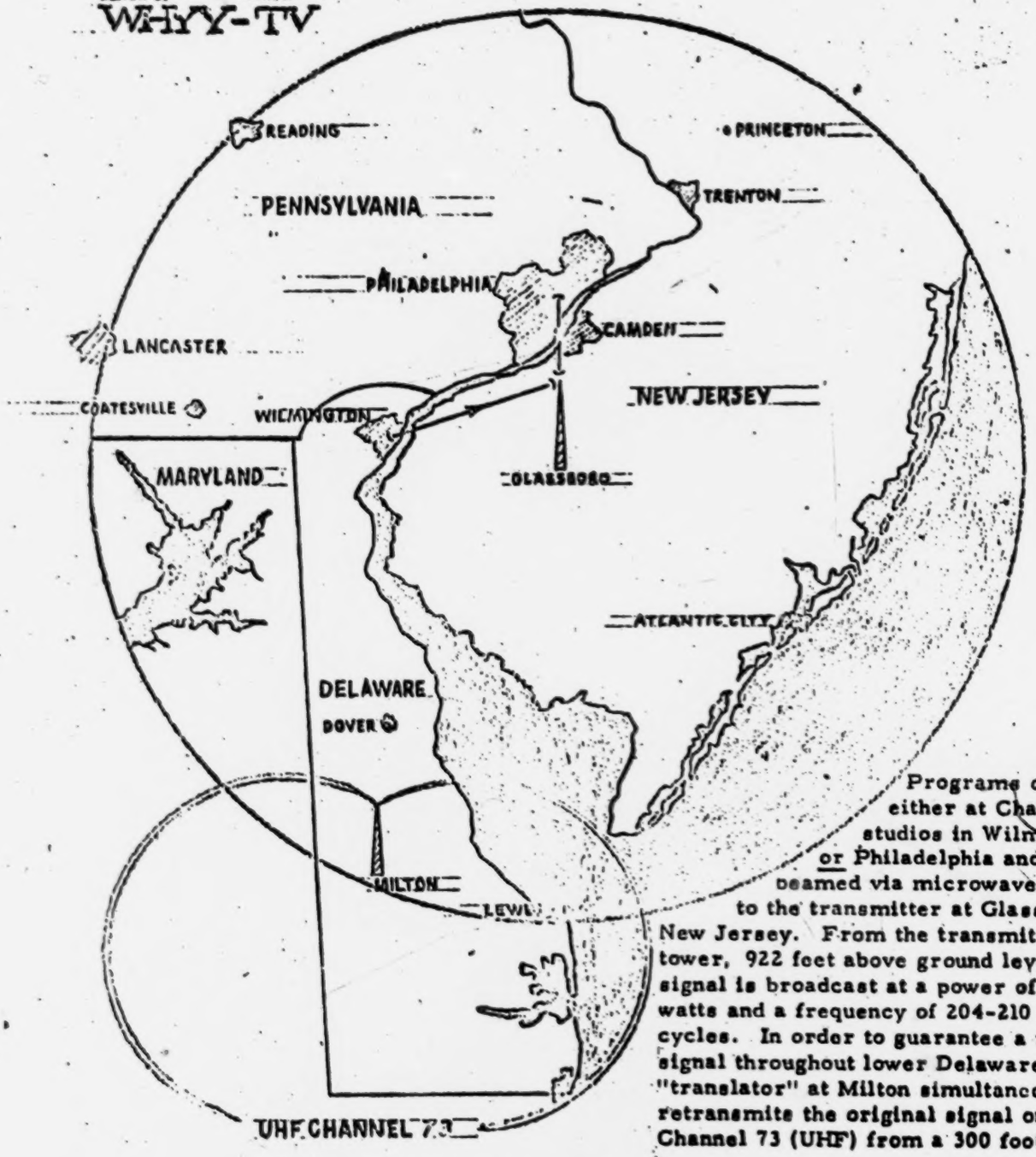
(Seal)

LEWIS P. MARX,
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires February 23, 1970.


CLEARTYPE
COUNTY-TOWN
PHILADELPHIA
GREATER METRO AREA
WHYY
EXHIBIT I-Y

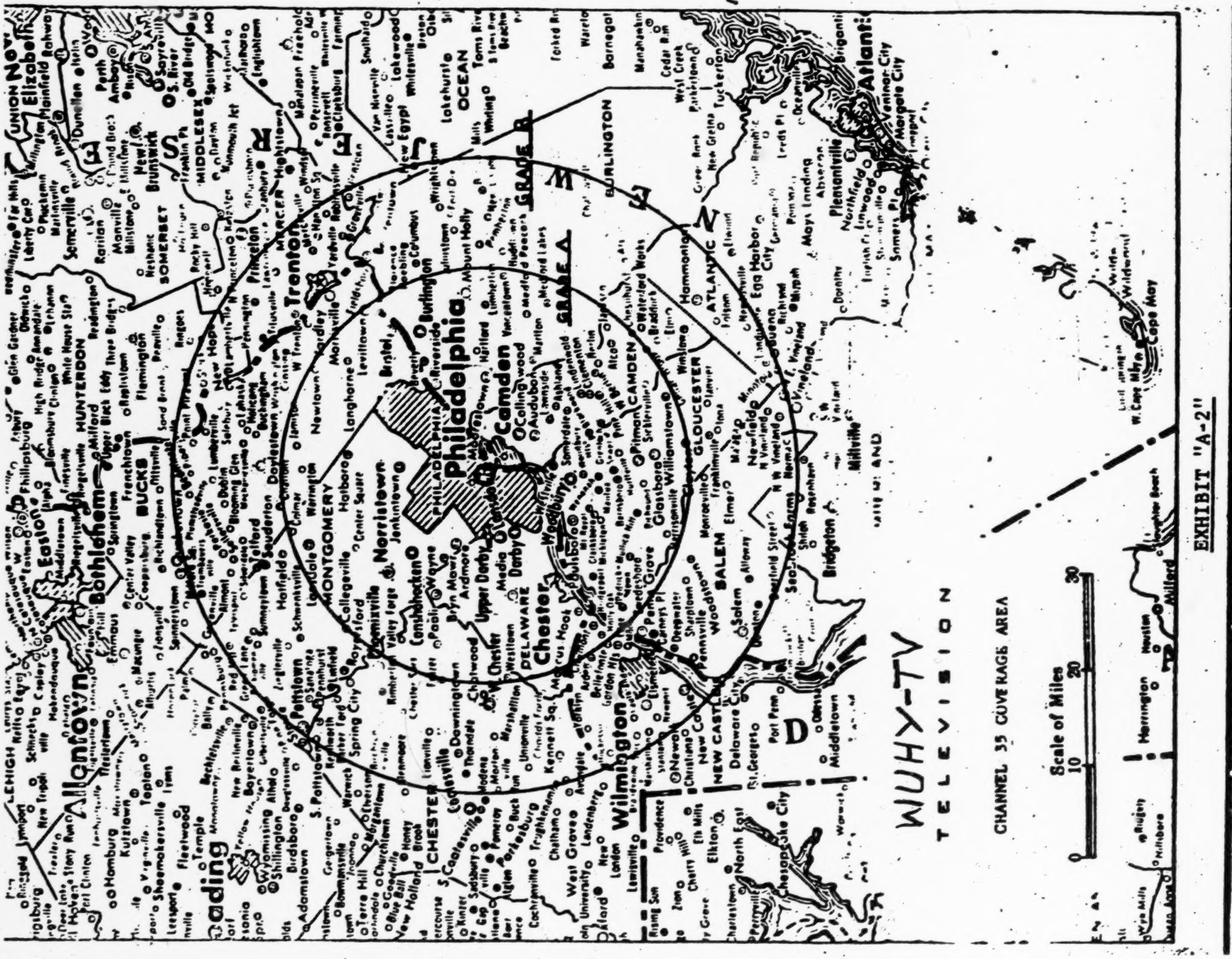
CHANNEL 12 WHYY-TV

OPERATIONS & COVERAGE MAP



Programs originate either at Channel 12 studios in Wilmington or Philadelphia and are beamed via microwave relay to the transmitter at Glassboro, New Jersey. From the transmitter tower, 922 feet above ground level, the signal is broadcast at a power of 316,000 watts and a frequency of 204-210 megacycles. In order to guarantee a usable signal throughout lower Delaware, a "translator" at Milton simultaneously retransmits the original signal on Channel 73 (UHF) from a 300 foot tower.

EXHIBIT "A-1(a)"


WUHY-TV
TELEVISION
CHANNEL 35 COVERAGE AREA
Scale of Miles
0
10
20
30
GRADE A
GRADE B
EXHIBIT "A-2"

Wilkes-Barre
Allentown
Bethlehem
Reading
Lancaster
Wilmington
Trenton
Norristown
Philadelphia
Camden
Atlantic City
Yonkers
Paterson
Elizabeth
COLUMBIA
MONROE
CARBON
WARREN
NORTHAMPTON
LEHIGH
BUCKS
HUNTERDON
SOMERSET
MIDDLESEX
MONMOUTH
MERCER
MONTGOMERY
CHESTER
DELAWARE
BURLINGTON
CAMDEN
GLOUCESTER
ATLANTIC
OCEAN
CUMBERLAND
CAPE MAY
SALEM
LANCASTER
HARFORD
CECIL
KENT
QUEEN ANNES
TALBOT
CAROLINE
SUSSEX
PASSAIC
BERGEN
MORRIS
ESSEX
UNION
DELAWARE
MARYLAND
NEW JERSEY
CLEARTYPE
COUNTY-TOWN
PHILADELPHIA
GREATER METROPOLITAN AREA
Scale of Miles
10
20
30
MAP NO.
AMERICAN MAP COMPANY, INC.
CLEARTYPE MAPS
COLORPRINT MAPS
WUHY RADIO
FM COVERAGE AREA 90.9 MC

EXHIBIT "A-3"

WHYY, INC.

BOARD OF DIRECTORS AS OF MARCH, 1967

Donald K. Angell, Vice President & Assistant to President, University of Pennsylvania

Mrs. John Biggs, Jr., Board member, Delaware Educational Television Association

Richard C. Bond, Chairman of the Board, The John Wanamaker Store

Dr. Allen T. Bonnell, President, Community College of Philadelphia

Dr. Anthony R. Catrambone, Superintendent of Schools, Camden, New Jersey

Richardson Dilworth, President, Philadelphia Board of Education, former Mayor of Philadelphia

F. Eugene Dixon, Jr., Management Trustee

John Thompson Dorrance, Jr., Chairman of the Board, Campbell Soup Company

Reverend Joseph Flaherty, O. S. A., President, Villanova University

Mrs. George T. Francis, Jr., member of Board of National Recreation & Parks Assn., & Vice President of Educational Television Council

William Goldman, President, William Goldman Theatres, Inc.

Dr. Richard P. Gousha, State Superintendent of Public Instruction, State of Delaware

Dr. William W. Hagerty, President, Drexel Institute of Technology

Mrs. Norma B. Handloff, Mayor of the City of Newark, Delaware

Harry G. Haskell, Jr., former U.S. Representative from Delaware

Philip Klein, President, Board of Trustees, Harcum Junior College

Warren A. Kraetzer, Executive Vice President & General Manager, WHYY, Inc.

J. Harry LaBrum, Esq., partner in law firm of LaBrum & Doak, & former President of Philadelphia Board of Education

J. H. Tyler McConnell, President & Chief Executive Officer, Delaware Trust Co., Wilmington

Albert J. Nesbitt, retired Chairman, I.T.T.-Nesbitt, Inc.

Paul D'Ortona, President of City Council of Philadelphia

R. G. Rincliffe, Chairman of the Board, Philadelphia Electric Company

Dr. T. Edward Rutter, Superintendent of Schools, Radnor Public Schools, Pennsylvania; Chairman Curriculum Advisory Committee & President of Tri-State Instructional Broadcasting Council

Arthur J. Sills, New Jersey State Attorney General

James H. J. Tate, Mayor of City of Philadelphia

Edward F. Toohey, President of Philadelphia Council, AFL/CIO

William B. Walker, President, The First Pennsylvania Banking & Trust Company

EXHIBIT "B"

CLIPPING SERVICE
20 S. 15th St.
Phila. 2, Pa.

Pub -
News Report
Gremlock, N. J.
SEP W 1965
DATE

Highlights

The daily life of nearly four illion people living in the shadw of Red China is the subject a nnel 12 documentary, Hong Kong", Monday, Sept. 12, 8:30 p.m.

Examining how the people of ong Kong carry on business to e exclusion of politics, the alf-hour report explains why e Red Chinese do not overrun e island.

In the film, the acute poverty contrasted to the wealth of Hong ong's affluent international soety as cameras follow hundreds thousands of Communist Chise refugees -- denied a haven Hong Kong -- as they visit area where half a million peass live in squatters' shacks cking plumbing and electricity.

SIBELIUS CENTENARY

In the first of two broadcasts corded at the Sibelius Cenary Festival in Finland, Chan- 12 will present a concert of ldom performed works by the to Finnish master, Friday, pt. 16, at 9 p.m. Part two of e Festival will be seen on Fri- y, Sept. 30, at 9 p.m.

On the first program the Finsh Radio Symphony Orchestra ll perform Sibelius' Suite from e incidental music to Shakesare's "The Tempest"; Humesqu os. 1, 3, 4 and 8 for olin a.. orchestra, Heimo Haitsoloist; and Cantata for chorand orchestra, "The Origin Fire,"

"Festival: Sibelius Symphony will be rebroadcast on Chan- 12 Sunday, Sept. 18, at 9 p.m.

KING GEORGE V

King George V, England's shy g who was usually worried and zzled by the many problems of lities and war, but who guidhis country through massive ial change without violence, is ofiled on Channel 12's "Men Our Time", Tuesday, Sept. , at 8 p.m.

Featured guest is Robert Maczie, well - known correspont for the BBC and political ientist at the London School of onomics, who will comment changes in English history t have resulted from King orge's reign.

DISCUSSES "KING LEAR"

Morris Carnovsky, who played title role in Shakespeare's g Lear at Stratford, Connecut, in 1963, discusses his inpretation of this challenging e with Elliot Norton, Peabody ard-winning drama critic for Bo: Record-American and nday Advertiser, Thursday, t. 15, at 8 p.m. on Channel s "Conversations."

Carnovsky recalls how he solvthe difficult problems involved the portrayal of Lear and nments on the intense mental ncentration and physical stamthe part demanded.

ON OTHER PLANETS.

Top science fiction and science t writers discuss the possibilof intelligent life on other nets and what it may be like an imaginative "Open End", eat, Thursday, Sept. 15, at 0 p.m.

Writers Ray Bradbury, Lester l Rey, Isaac Asimov and Walt Sullivan speculate on what this th will be like in 25 years, counting for all the technolo- al changes that science writare predicting.

Channel 12 Offers Classes For Adults

Channel 12 will present two special two-semester high school courses aimed at adults who may earn their high school diplomas through the Standard Evening Adult High School. The course, "Biology" and "Literature and English Usage," are presented through Philadelphia's Division of School Extension and the Division of Radio and Television.

The biology course is presented Mondays and Thursdays at 7 on WHYY-TV and the "Literature and English Usage" course Wednesday and Friday evenings at the same time.

Viewers seeking credit for either or both of the two courses may register for the semester in the auditorium of Benjamin Franklin High School, Broad and Green streets, Philadelphia, on Wednesday and Thursday, and Tuesdays, October 4 and 11 between 7:30 and 9:30 p.m. At the conclusion of the courses examinations will be held.

Edward H. Goldman, former head of the science department at South Philadelphia High School and co-author of "Biological Science for High School," conducts the biology program.

Dr. Richard Mitchell, professor of English at Glassboro, New Jersey State College, presents the literature series. Dr. Mitchell has taught secondary school English and has been active in dramatics.

Further information about the televised courses may be obtained by calling the Standard Evening Adult High School at LOcust 7-5796.

MUTUAL PRESS
CLIPPING SERVICE
20 S. 15th St.
Phila. 2, Pa.
SEP 17 1965
Bridgeton
Evening News
Bridgeton, N. J.

MUTUAL PRESS
CLIPPING SERVICE
20 S. 15th St.
Phila. 2, Pa.
OCT 27 1965
Glassboro
Enterprise
Glassboro, N. J.

Area Pastors, Congregations View TV Show

Pastors and members of six Glassboro congregations participated in an unusual experience on Sunday evening, October 23, 1966 at the First Presbyterian Church. Together they viewed the Channel 12 program entitled "A Time For Burning."

This program brilliantly spoke to the contradiction of a white congregation professing obedience to the teachings of Jesus but refusing to open its hearts to those of another color. Specifically it dealt with what happened in a Lutheran Church in Omaha, Nebraska, when it was proposed to the official board that ten families from the church visit in the homes of ten families in a Negro Lutheran Church three blocks away.

According to the Reverend Robert W. Shaffer, host pastor: "In the discussion which followed their was compassion expressed for those white persons in many churches who cannot bring themselves emotionally or psychologically to expand their limited experience of brotherhood. Fear was pointed to most frequently as the reason for white persons failing to begin the dialogue. The fact that more Negro than white congregations responded to the invitation was taken as evidence of the need for further progress in local race relations. The warmth, compassion, and courage expressed by Negro participants made it clear how ungrounded many fears are in the light of present realities."

Future inter-congregational and inter-racial meetings may be planned to address specific local issues.

Export Business Dramatized For Viewers Tues.

"Export Means Business," an informative 8-program series produced by Channel 12 and aimed at encouraging American businessmen to explore the possibilities of selling their products to foreign markets, premieres on Channel 12 Tuesday at 7:30 p.m.

Produced by WHYY under a grant from the Pennsylvania Department of Public Instruction, "Export Means Business" uses dramatizations and documentary film footage to show American businessmen the advantages in profit and prestige that accrue from selling goods overseas and demonstrates the methods by which this type of marketing can be accomplished.

The weekly half-hour programs were filmed at the Port of Philadelphia and also show scenes from international exhibitions that have been held in major European and Asian trade centers.

In addition, leading industry and government spokesmen discuss the pros and cons of overseas marketing. Appearing during the course of the series will be Thomas C. Ballagh, President, Ballagh & Thrall, Inc., export managers; Stanley D. Bernstein, President, Quaker Export Packaging Co.; Martin L. Hoffman, Vice President, Allen Forwarding Co.; George L. Kappes, export supervisor, Rohm & Haas Co.; and Dr. Roland L. Kramer, University of Pennsylvania.

Also, Francis Lewis, Insurance Company of North America; William H. Lukens, Chairman, Regional Export Expansion Council; Charles Lyon, Assistant Treasurer, The First Pennsylvania Banking and Trust Co.; Patrick McCabe, Foreign Trade Specialist, U. S. Department of Commerce; and Edward H. McDermott, Customer Service Manager, International Division, The Budd Co.

MUTUAL PRESS
CLIPPING SERVICE
20 S. 15th St.
Phila. 2, Pa.

Bridgeton
Evening News
Bridgeton, N. J.
SEP 24 1965

Appendix D

EXHIBIT "C"

A-64

Russian Poet Hits Hard On 12's New 'Showcase'

If it had not been for the unusual, this week's column would be about the new shows on TV's so-called "second season." But the new entries will have to wait. At this point, they're not important. All of them put together are pale in comparison with one program — one 90-minute offering last Sunday night on WHYY TV 12, the educational station.

This rarity in TV programming also was a premiere, the first offering on the "Sunday Showcase" series, 9 p.m., which is financed by a grant from Bristol-Myers. It featured the controversial Russian poet Yevgeny Yetushenko, reading some of his works.

By Ed Devenney

Simple? Yes, it was. Two actors, a man and a woman, first read his works in English. Then Yevgeny mounted a circular platform, stationed amid a small audience, and did the same in Russian — with, of course, all the feeling a poet has for his own works. And, about mid-point in the program, three Western-world poets interviewed Yevgeny for some 15 minutes.

Simple, it was. No plush settings. No attempts to dramatize the poems with visual aids. Merely an audio presentation, with the viewer on his own to conjure up settings and scenes in his mind's eye.

And yet the presentation was dramatic and powerful. Here was this peasant type — young, tall, sinewy, with fair, closely-cropped hair, long arms and massive-looking, expressive hands, dressed in a long-sleeved sport shirt — spouting his lines in Russian from a soap-box setting.

No long hair. In fact, it looked as though a bowl may have been the design for his haircut. No beard, no vandyke. No pipe; he was a chainsmoker of cigarettes.

Yevgeny Yetushenko was powerful. But his poetry was even more. It dripped satire, sense, morality, wisdom, wit, blood, sweat and tears all over the place.

One poem pictured the author as a child witnessing a crowd beating a man. All the townspeople were rushing to see it. He, a mere boy, was asked to join the beating, kicking, stomping of the poor soul. Instead, he tells how he wept. He ended the poem with a line something like this: "If 100 are beating up a man, even if he deserves it, I will never be number 101!"

His satire on spying was devastating. He told about the Chinese secret agent who tried to hide in the sofa, but got caught in the springs. Instead of hollering "Mama, Mama!" the spy yelled "Mao, Mao!" The poem closed with this line: 'A spy will always be a spy; Christ, always Christ."

Another of his poems was about a tart who fell in the mud at a country fair. A young lad picked her up and walked a ways with her. Russian agents watching the pair wondered who was the more dangerous. Yevgeny said: "The most dangerous is someone who can't pass by someone who has been trampled down."

He went on to say that "Russia has been trampled down...but a boy will come along and pick her up."

During the interview he was asked by one the Western poets about his attitude toward American audiences always asking him political questions. His reply: "There are many ugly faces you'd like to slap. But there is one danger to this. When you slap too often, your hand loses its sensitivity."

And this was followed on Channel 12 by David Susskind's show, the highlight of which was an interview with a fashion designer who selects "The Ten Worst Dressed Women of the Year." Hilarious. And so true.

If "Sunday Showcase" follows the form of its premiere, TV-12 is going to have a blockbuster of a programming block on Sunday nights with Susskind and his usual entertaining, provocative, intelligent shows following.

Even though the year is only a babe, I've already got to list last week's "Sunday Showcase" as one of the top television programs of this or any other season.

MUTUAL PRESS CLIPPING SERVICE
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Catholic Star Herald
Camden, N. J.

DATE JAN 13 1967

Exhibit "D":

NEW JERSEY ORIENTED PROGRAMS

PROFILE NEW JERSEY

Produced by WNDT-TV. Aired on WHYY September 18, 1964 through March 12, 1965. 24 programs—30 minutes.

SCIENCE AND AGRICULTURE

Produced by WHYY in cooperation with Rutgers University. Aired on WHYY September 16, 1963 through June 1, 1964. 35 programs—15 minutes.

LET'S LOOK AT AGRICULTURE

Produced by WHYY in cooperation with Rutgers University, Department of Agriculture. Aired on WHYY September 17, 1963 through June 2, 1964. 35 programs—10 minutes.

MODERN AGRICULTURE

Produced by WHYY in cooperation with Rutgers University. Aired on WHYY September 28, 1964 through June 7, 1965. 35 programs—15 minutes.

WOMAN'S WORLD

Produced by WHYY in cooperation with Rutgers University, Department of Home Economics. Aired on WHYY October 16, 1964 through June 4, 1965. 30 programs—25 minutes.

SO YOU WANT TO GO TO COLLEGE

Produced by WHYY in cooperation with Glassboro College. Aired on WHYY Fall 1963 and Spring 1964. Rerun again during January and February 1966. 8 programs—30 minutes.

NEW JERSEY CHAMBER OF COMMERCE ANNUAL WASHINGTON DINNER

Featured state and local dignitaries. Aired on WHYY February 5, 1967. 2 hours.

TV 12 News Digest

Stories on New Jersey from the Associated Press wire service.

Status Report

"The New Jersey Bond Issue". Produced by WHYY. Aired October 21, 1963. A panel discussion dealing with the pending vote on the New Jersey Bond Issue for $750 million.

"Automation: An Enemy of the People". Produced by WHYY. Aired September 16, 1963 and September 23, 1963. A two-part program dealing on the unemployment problem created by automation. Guest on the show was Dr. Mason Gross, President of Rutgers University.

Metro Spect

"The Delaware River Basin Authority". Produced by WHYY. Aired March 2, 1967. Featured interviews with Governor Hughes as well as the Governors of New York, Pennsylvania and Delaware.

Whose Right to Know?

Produced by WHYY for National Educational Television. Aired on WHYY July 26, 1966. The program centered around the "free press, fair trial" issue and was filmed in the Hunterdon County Court House where the Lindberg kidnap trial was held.

Metro Spect

"Paul Ylvisaker, A Profile". Produced by WHYY. Will be aired on WHYY on June 1, 1967. A half hour interview with the Commissioner for the Department of Community Affairs for New Jersey.

Inauguration of Governor Hughes

Filmed in its entirety and the highlights were presented on the Channel 12 News.

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SUPREME COURT, U. S.

FILED
FEB 16 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1968

No. 10

WHYY, INC.,

Appellant,

v.

BOROUGH OF GLASSBORO

and

DIVISION OF TAX APPEALS OF THE DEPARTMENT OF THE TREASURY OF THE STATE OF NEW JERSEY,

Appellees.

On Appeal from the Supreme Court of New Jersey.

MOTION TO DISMISS APPEAL.

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Huntzinger Printing Corp., *Appellate Printers*, Camden, N. J.

INDEX

	PAGE
Jurisdictional Statement	1
Opinions Below	1
Questions Presented	1
Statement of Facts	2
Argument	2
I. This Court should not accept an appeal based on an infringement of a constitutional right unless it was seasonably raised	2
II. The issue of taxing this foreign non-profit corporation after January 1, 1968, is now moot by virtue of N. J. S. A. 54:4-3.6(a)	5
Conclusion	6
Appendix A—New Jersey Supreme Court Rule 1:2-1	6

TABLE OF CITATIONS

CASES:

Louisville etc. R. Co. v. Smith, 204 U. S. 551	4
Radio Station WOW v. Johnson, 326 U. S. 120	4
Railway Express Agency, Inc. v. Commonwealth of Virginia, 282 U. S. 440	5

PAGE

Spies v. Illinois, 123 U. S. 131 4

Thomas v. Iowa, 209 U. S. 258 4

STATUTES:

New Jersey Statutes Annotated 54:4-3.6 .....1, 3, 5

New Jersey Statutes Annotated 54:4-4.4 2

NEW JERSEY SUPREME COURT RULE:

New Jersey Supreme Court 1:2-1 .....3, 4, 6

JURISDICTIONAL STATEMENT.

This is an appeal by WHYY, Inc. ("WHYY") from the judgment of the Supreme Court of New Jersey, entered on July 5, 1967, affirming the judgment of the Superior Court of New Jersey, Appellate Division, denying appellant's petition for tax exemption (App. A of appellant's brief), Appellee, Borough of Glassboro, submits this brief to show that this Court has no jurisdiction of the appeal and a substantial question is not being presented.

OPINIONS BELOW.

The opinion of the Supreme Court of New Jersey is reported at 50 N. J. 6, 231 A. 2d 608 (1967). The opinion of the Superior Court, Appellate Division, is reported at 91 N. J. Super. 269, 219 A. 2d 893 (1966), copies of the opinion are found in Appellant's Appendix.

QUESTIONS PRESENTED.

1. Whether the Supreme Court of the United States has jurisdiction to hear this appeal because of the failure of the Appellant to raise the Federal question until it reached the New Jersey Supreme Court.

2. Whether the question to be considered is substantial inasmuch as all future tax liabilities have terminated subsequent to January 1, 1968, by virtue of the enactment of New Jersey Statute Annotated 54:4-3.6a (1967).

STATEMENT OF FACTS.

Appellee, Borough of Glassboro (hereinafter called "Borough"), agrees with the statement of facts of the appellant with the following additions: The appellant never applied for an exemption pursuant to the procedure as outlined in New Jersey Statutes Annotated 54:4-4.4 but instead, simply sent a letter to the Mayor and Borough Council as set forth in appellant's appendix Exhibit "C". The aforesaid procedure requires the one seeking the exemption to apply to the tax assessor under oath on a specific form as prescribed by the Director, Division of Taxation.

ARGUMENT.

I.

This Court should not accept an appeal based on an infringement of a constitutional right unless it was seasonably raised.

After the exemption was denied by the Borough, the appellant appealed to the Gloucester County Board of Taxation, an administrative body (Appellant's Appendix "C" pages 29-33). The appellant did not raise any constitutional right but simply claimed a tax exemption as a nonprofit and educational institution.

Following an adverse decision the appellant appealed to the New Jersey Division of Tax Appeals. Once again the appellant failed to raise any constitutional right (Appellant's Appendix "C" pages 34-40). This appeal was heard

before Anthony H. Lario, President of the Division of Tax Appeals and is heard as a trial de novo. The opinion of the Court is set forth in appellant's appendix "C" pages 43-47. The sole argument of the appellant was in the statutory construction of N. J. S. A. 54:4-3.6.

Following an adverse decision the appellant filed an appeal with the Appellate Division of the Superior Court. Once again, the appellant failed to raise any constitutional argument. The two questions presented by the appellant in his Appellate Division Brief were:

1. "Is a non-profit corporation organized to provide cultural recreational, and educational radio and television broadcasts, entitled to a tax exemption on its real property in the State of New Jersey."

2. "Is a foreign, non-profit corporation, organized under the laws of the State of New Jersey, entitled to a tax exemption."

The only mention of a constitutional issue is found on page 6 of the Appellant's Brief where it is argued:

> "In light of the above requirements, it is our position that the petitioner is fully subject to legal process under the laws of the State of New Jersey, as if it were originally incorporated in the State of New Jersey, and is, therefore, equally entitled to any exemption under the constitutional provision of equal protection."

The Borough moved to dismiss the appellant's appeal to the New Jersey Supreme Court for failure to raise a constitutional issue prior to that time. (The Appellate Division's decision was unanimous thereby leaving the appellant without a ground for appeal—New Jersey Supreme

Court Rule 1:2-1 (App. A).) The New Jersey Supreme Court said at 231 A. 2d 608, 611:

> "This Court may but need not accept a constitutional question not raised below. *Lettieu v. State Board of Medical Examiners,* 24 N. J. 199, 206, 131 A. 2d 518 (1957). As this constitutional contention is one of great concern to many municipalities and non-profit foreign corporations, the public interest in this question demands that it be decided" (Appellant's App. A p. 21).

It is clear that the New Jersey Supreme Court agreed with the Borough's contention that a constitutional issue had not been raised prior to the appeal to that Court. However, the Court felt the problem of such public concern to waive the rule.

This Court has repeatedly denied appeals which did not seasonably raise the Federal question. *Spies v. Illinois,* 8 S. Ct. 21, 123 U. S. 131, 31 L. Ed. 80; *Radio Station WOW v. Johnson,* 65 S. Ct. 1475, 326 U. S. 120, 89 L. Ed. 2092.

As was stated by this Court in *Thomas v. Iowa,* 28 S. Ct. 487, 209 U. S. 258, 52 L. Ed. 782:

> "A mere claim in the Court below that there has been a denial of due process of law does not of itself raise a federal question with sufficient distinction to give us jurisdiction to consider whether there has been a violation of the Fourteenth Amendment of the Constitution."

And in *Louisville, etc. R. Co. v. Smith,* 27 S. Ct. 401, 204 U. S. 551, 51 L. Ed. 612, this Court said:

> "If a party relies upon a federal right, he must specially set it up, and a denial of liability under the law is not a compliance with that requirement."

It is clear that the appellant first raised the Federal question when it appealed to the New Jersey Supreme Court. This is not in compliance with the prior stated Federal cases and, therefore, not seasonably raised.

II.

The issue of taxing this foreign non-profit corporation after January 1, 1968, is now moot by virtue of N. J. S. A. 54:4-3.6(a).

During the pendency of the various appeals the appellant was successful in having a bill passed in New Jersey Legislature—Chapter 24 of the New Jersey Laws of 1967.

This act now grants the appellant the exemption which was previously denied it by the various Courts of New Jersey and N. J. S. A. 54:4-3.6. Therefore, the question before the Court is based on the petitioner's refusal to pay taxes to the Borough prior to the enactment of the aforementioned legislation.

Deciding this issue will have no significance upon future cases inasmuch as the amount due has been fixed and there is no further liability after January 1, 1968. Furthermore, this Court has held in *Railway Express Agency Inc. v. Commonwealth of Virginia,* 282 U. S. 440, 51 S. Ct. 201, 75 L. Ed. 450 (1931), that a state could require a foreign corporation to become a domestic corporation, in order to do business in Virginia. This holding was reached even though the plaintiff argued that it would lose its diversity status and thereby the use of the Federal Courts.

The State of New Jersey, prior to January 1, 1968 allowed a tax exemption status to non-profit corporations who were or became domestic corporations.

CONCLUSION.

It is, therefore, respectfully submitted that the appeal be dismissed for failure of the appellant to raise a Federal question at the proper time and, furthermore, the question is not substantial.

Respectfully submitted,

JOHN W. TRIMBLE,
Solicitor, Borough of Glassboro.

APPENDIX A.

1:2-1. APPEALS IN GENERAL.

Appeals may be taken to this Court from final judgments:

(a) In causes determined by the Appellate Division of the Superior Court involving a question arising under the Constitution of the United States or this State;

(b) In causes where there is a dissent in the Appellate Division of the Superior Court;

(c) Directly from the trial courts in causes where the death penalty has been imposed and in post-conviction proceedings in such causes;

(d) On certification by this court to the Superior Court, to the county courts and to all other courts pursuant to Rule 1:10; and

(e) In such causes as may be provided by law.

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IN THE

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No. [redacted] 10

WHYY, INC.,

Appellant,

v.

BOROUGH OF GLASSBORO

and

DIVISION OF TAX APPEALS OF THE DEPARTMENT OF THE TREASURY OF THE STATE OF NEW JERSEY,

Appellees.

On Appeal From the Supreme Court of New Jersey.

BRIEF FOR APPELLANT.

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INDEX TO BRIEF FOR APPELLANT.

	Page
OPINIONS BELOW	1
JURISDICTION	2
STATUTES INVOLVED	3
QUESTION PRESENTED	3
STATEMENT OF THE CASE	4
SUMMARY OF THE ARGUMENT	7
ARGUMENT	8
A Foreign Nonprofit Corporation Qualified and Admitted to the State of New Jersey and Whose Operations Substantially Benefit the People of New Jersey, Is Denied Equal Protection of the Laws Under the Fourteenth Amendment When a Property Tax Exemption Granted to Domestic Nonprofit Corporations Is Denied the Foreign Nonprofit Corporation Solely Because It Was Not Incorporated in New Jersey	8
CONCLUSION	16
APPENDIX 1—Opinion of Supreme Court of New Jersey	17
APPENDIX 2—Opinion of Superior Court of New Jersey	23
APPENDIX 3—New Jersey Statutes Annotated, Title 14, Chap. 15-2, Title 54 Chap. 4-3.6	26
APPENDIX 4—United States Constitution Amendment XIV	30
APPENDIX 5—Pennsylvania Nonprofit Corporation Law, Title 15, Sections 7001, 7003	32

TABLE OF CASES CITED.

	Page
Allied Stores of Ohio v. Bowers, 358 U. S. 522 (1959)	10
Bell's Gap Railroad Co. v. Pennsylvania, 134 U. S. 232 (1890)	8, 9
Board of Education of Kentucky Methodist Episcopal Church v. Illinois, 203 U. S. 553 (1906)	14
Central R. Co. of Pennsylvania v. Commonwealth of Pennsylvania, 370 U. S. 607 (1962)	3
Gulf, Colo. & S. F. Ry. v. Ellis, 165 U. S. 150 (1897)	9
Hanover Fire Insurance Co. v. Harding, 272 U. S. 494 (1926)	10
Power Mfg. Co. v. Saunders, 274 U. S. 490 (1927)	10
Reserve Life Insurance Co. v. Bowers, 379 U. S. 810 (1964); 380 U. S. 258 (1965), reversing 175 Ohio St. 468, 196 N. E. 2d 87 (1964)	10, 12
Southern Railway Co. v. Greene, 216 U. S. 400 (1910)	9
Standard Oil Co. v. Peck, 342 U. S. 382 (1952)	3
Township of Hillsborough v. Cromwell, 326 U. S. 620 (1946)	10
Warren Trading Post Co. v. Arizona State Taxing Commission, 380 U. S. 685 (1965)	3
Wheeling Steel Corporation v. Glander, 337 U. S. 562 (1949)	7, 10, 11, 12, 14, 15

STATUTES CITED.

	Page
New Jersey Statutes Annotated, Title 14, Chapter 15-2, 3, 4; Title 54, Chapter 4-3.6; Title 54, Chapter 10A	2, 3
Pennsylvania Nonprofit Corporation Law, 15 Purd. Pa. Stat. Annotated §§ 7001, et seq.	3, 4
28 U. S. C. § 1257(2)	3
United States Constitution, Amendment XIV, § 1	2, 3, 9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967.

No. 824.

WHYY, INC.,

Appellant,

v.

BOROUGH OF GLASSBORO

AND

DIVISION OF TAX APPEALS OF THE DEPARTMENT OF THE TREASURY OF THE STATE OF NEW JERSEY,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY.

BRIEF FOR APPELLANT.

OPINIONS BELOW.

The opinion of the Supreme Court of New Jersey is reported at 50 N. J. 6, 231 A. 2d 608 (1967). See Appendix 1 to this brief. (A-6). The opinion of the Superior Court, Appellate Division, is reported at 91 N. J. Super. 269, 219 A. 2d 893 (1966). See Appendix 2 to this brief. (A-3).

JURISDICTION.

Proceedings leading to this appeal were begun by petition to the Division of Tax Appeals, in the Department of the Treasury, State of New Jersey, to set aside a denial by the Gloucester County Board of Taxation of appellant's petition for exemption of its property from personal and real property tax under New Jersey Statutes Annotated 54:4-3.6 (A-24).

The judgment of the Division of Tax Appeals denied appellant's petition on November 17, 1965, and affirmed the decision of the Gloucester County Board of Taxation (A-33).

The decision of the Division of Tax Appeals was appealed to the Superior Court of New Jersey, Appellate Division, which, on May 20, 1966, affirmed the decision of the Division of Tax Appeals (A-3).

Appellant appealed to the Supreme Court of New Jersey, which, on July 5, 1967, affirmed the judgment of the Superior Court (A-6).

Appellant's Notice of Appeal to this Court was filed in the Supreme Court of New Jersey on September 19, 1967, within the statutorily prescribed period.

This Court noted probable jurisdiction on March 11, 1968.

The question involved is the constitutionality, under the Fourteenth Amendment to the Federal Constitution, of a New Jersey statute, L. 1941, Ch. 243, p. 663, § 1, as amended, N. J. S. A. 54:4-3.6, which undertakes to tax a Pennsylvania nonprofit corporation, qualified, registered and admitted in New Jersey, on the value of its real and personal property used exclusively in New Jersey for educational purposes, but does not tax identical property used for identical purposes when such property is owned by nonprofit corporations incorporated in New Jersey.

The Supreme Court of New Jersey expressly rejected a direct challenge to the statute's constitutionality, based on the Fourteenth Amendment (A-9).

Jurisdiction in this case is predicated upon 28 U. S. C. § 1257(2). *Warren Trading Post Co. v. Arizona State Taxing Commission,* 380 U. S. 685 (1965); *Central R. Co. of Pennsylvania v. Commonwealth of Pennsylvania,* 370 U. S. 607 (1962); *Standard Oil Co. v. Peck,* 342 U. S. 382 (1952).

STATUTES INVOLVED.

New Jersey Statutes Annotated, Title 14, Chapter 15-2, 3, 4; Title 54, Chapter 4-3.6; Title 54, Chapter 10A; see Appendix 3 to this brief.

United States Constitution, Amendment XIV, § 1; see Appendix 4 to this brief.

Pennsylvania Nonprofit Corporation Law, 15 Purd. Pa. Stat. Annotated §§ 7001, et seq.; see Appendix 5 to this brief.

QUESTION PRESENTED.

Whether the Supreme Court of New Jersey has denied appellant equal protection of the laws by upholding the constitutionality of a New Jersey statute which purports to tax a Pennsylvania nonprofit corporation, qualified, registered and admitted to do business in New Jersey, on property used in New Jersey exclusively for educational purposes, but does not tax identical property used for identical purposes if that property is owned by nonprofit corporations incorporated in New Jersey.

STATEMENT OF THE CASE.

There is no dispute concerning any of the facts.

Appellant is organized as a nonprofit corporation under the Pennsylvania Nonprofit Corporation Law, 15 Purd. Pa. Stat. Ann. §§ 7001 et seq. (A-49, 50). It operates an educational television and radio station which broadcasts cultural, recreational and educational, non-commercial, radio and television programs in the Delaware Valley area, under license by the Federal Communications Commission.

Appellant is admitted to do business as a foreign nonprofit corporation in the state of New Jersey. By this admission to do business, New Jersey has granted WHYY within the state all the lawful business rights of a corporation incorporated under the laws of New Jersey for the conduct of similar business (A-4, 7, 14, 28, 47-50).

WHYY is authorized by the Federal Communications Commission to broadcast non-commercial television on two channels: VHF Channel 12, allocated to Wilmington, Delaware, and UHF Channel 35, allocated to Philadelphia. The Commission also authorized non-commercial FM radio broadcasts by appellant, on Station WUHY, operating on a frequency of 90.9 mc., allocated to Philadelphia. Although all three permits are in use, the property involved in this appeal is the land, buildings and equipment used for the TV Channel 12 transmitter, all of which is located in New Jersey; consequently, Channel 35 and the radio station are not involved in this proceeding (A-47, 48).

The coverage area for Channel 12 provided by the main transmitter located at Glassboro, New Jersey, and supplemented by a "translator" at Milton, Delaware, includes not only the southern part of New Jersey, but also the entire state of Delaware, southeastern Pennsylvania and a small part of Maryland (A-59, 60). Although precise popu-

lation figures are not available, WHYY's signals reach approximately 8,000,000 people, of whom about 29.5% are residents of New Jersey (A-49).

WHYY's programs can be classified into two categories: in-school use, and general. Most of the daytime programs are intended for in-school use. These broadcasts consist of elementary and secondary school teaching programs coordinated with the curricula of subscribing school districts in Pennsylvania, Delaware and New Jersey. Seven such districts are located in New Jersey (A-52-54). On weekdays, from 4 p.m. to 11:30 p.m., and on Sundays, general programming is devoted to broadcasts of a cultural, informative and educational nature. Included in the general programming are local broadcasts intended to appeal especially to residents of New Jersey (A-54-56, 66-67).

By the terms of its Articles of Incorporation and the Pennsylvania statute under which it was organized, WHYY is forbidden to engage in any activities which enure to the gain of any private corporation or individual. It has no stockholders and can pay no dividends (A-50).

As a non-commercial, educational licensee of the Federal Communications Commission, WHYY is also barred by federal statute and SEC regulations from accepting advertising or selling time. Its funds are obtained primarily from (1) payments by school districts for programming services for use in public schools, (2) governmental agencies and subsidies, and (3) contributions by individuals and organizations (A-50-54).

WHYY has been exempted from taxation by all other governmental taxing authorities. The Internal Revenue Service has determined that the corporation is an "exempt organization" organized and operated exclusively for charitable and educational purposes under section 501(c)(3) of the Internal Revenue Code. Further, contributions to

WHYY are deductible as charitable contributions for federal income tax purposes. Appellant has also been exempted from the payment of sales, license and property taxes by the Commonwealth of Pennsylvania and by the Cities of Philadelphia, Pennsylvania and Wilmington, Delaware (A-28, 34, 50).

The instant action arises out of an attempt by the Borough of Glassboro to impose taxes upon real and personal property devoted exclusively to WHYY's Channel 12 transmissions. The real property, which is the only property owned by WHYY in New Jersey, was purchased in 1963 (A-48). Subsequently WHYY erected thereon a television transmission station and tower (A-30). The Borough levied tax assessments for the year 1964 on this entire property. WHYY thereupon requested exemption as an educational, nonprofit corporation. The request was denied and, on August 13, 1964, the proceedings leading to this appeal were begun (A-19, 21).

The Superior Court of New Jersey noted that "... The Company is not 'incorporated or organized under the laws of this State' and noted that 'were it not for this, it would meet the criteria of N. J. S. A. 54:4-3.6:' " (A-5).

The Supreme Court of New Jersey affirmed the denial of the exemption and specifically rejected appellant's argument based on the Equal Protection Clause (A-9-10).

SUMMARY OF ARGUMENT.

In attempting to tax the property of appellant, a registered, foreign nonprofit corporation, and at the same time not taxing the same type of property if owned by any domestic nonprofit corporation, the state of New Jersey is denying equal protection of its laws to the appellant, contrary to the Fourteenth Amendment.

A state may impose discriminatory requirements on a foreign corporation as a condition to admission within its boundaries; however, once such a corporation has been admitted and is registered in the state, it is entitled to treatment equal to that accorded the domestic corporations of a state. Appellant, having been duly admitted to the state of New Jersey, is entitled to be taxed in the same manner as any New Jersey corporation within the same classification.

The issue involved was decided in *Wheeling Steel Corporation v. Glander,* 337 U. S. 562 (1949), where this Court invalidated an ad valorem tax on property owned by an out-of-state corporation, registered to do business in the state, while exempting identical property owned by domestic corporations of the same class.

ARGUMENT.

A Foreign Nonprofit Corporation Qualified and Admitted to the State of New Jersey and Whose Operations Substantially Benefit the People of New Jersey Is Denied Equal Protection of the Laws Under the Fourteenth Amendment When a Property Tax Exemption Granted to Domestic Nonprofit Corporations Is Denied the Foreign Nonprofit Corporation Solely Because It Was Not Incorporated in New Jersey.

This case presents the simple question whether the Federal Constitution permits a state to levy a property tax on registered foreign corporations and at the same time exempt identical property of domestic corporations, where the sole basis for discrimination is the state of incorporation.

There is no question concerning any of the facts; there is no question concerning the nature of the tax as a property tax, as distinguished from a franchise tax; indeed there is no question concerning the nature of the question, because the opinions of the courts below have made it clear that appellant would not have to pay this tax if, instead of having been incorporated in Pennsylvania, it had chosen New Jersey as its home state (A-5, 9-10).

This Court in *Bell's Gap Railroad Co. v. Pennsylvania*, 134 U. S. 232, 237 (1890), first pointed to the limits on the taxing power of a state imposed by the Fourteenth Amendment:

> "The provision in the XIVth Amendment, that no State shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses,

exempt certain classes of property from any taxation at all, such as churches, libraries and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the State Legislature, or the people of the State in framing their Constitution. But clear and hostile discriminations against particular persons and classes, especially such as are of an unsual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition."

Although the Court in *Bell's Gap* laid down no "iron rule" regarding equality in taxation, the doctrine was soon evolved that all classifications must "rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and never be made arbitrarily and without any such basis." *Gulf, Colo. & S. F. Ry. v. Ellis,* 165 U. S. 150, 155 (1897).

At least since *Southern Railway Co. v. Greene,* 216 U. S. 400 (1910), an unbroken line of decisions by this Court has held that a tax which discriminates solely on the basis of the residence of the individual owner, or state of incorporation, is a violation of the Equal Protection Clause of the Fourteenth Amendment. A State may impose discriminatory requirements on a foreign corporation as a condition to admission within its boundaries. However, once the corporation has been admitted, it is entitled to treatment equal to that accorded to the state's own

corporate progeny. *Reserve Life Insurance Co. v. Bowers,* 380 U. S. 258 (1965); *Allied Stores of Ohio v. Bowers,* 358 U. S. 522 (1959); *Wheeling Steel Corporation v. Glander,* 337 U. S. 562 (1949); *Power Mfg. Co. v. Saunders,* 274 U. S. 490 (1927); *Hanover Fire Insurance Co. v. Harding,* 272 U. S. 494 (1926).

As was pointed out in *Township of Hillsborough v. Cromwell,* 326 U. S. 620, 623 (1946), a case dealing with individual taxpayers, the ultimate guarantee to all citizens is the right to equal treatment:

> "The equal protection clause of the Fourteenth Amendment protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class. The right is the right to equal treatment."

The most recent discussion of the principle as applied to corporations is found in *Wheeling Steel Corporation v. Glander,* 337 U. S. 562 (1949). In that case, this Court invalidated an Ohio statute levying an ad valorem tax on intangibles of foreign corporations, but exempting identical property of resident individuals and domestic corporations.

The controlling cencept was stated by this Court as follows:

> "After a state has chosen to domesticate foreign corporations, the adopted corporations are entitled to equal protection with the state's own corporate progeny, at least to the extent that their property is entitled to an equally favorable *ad valorem* tax basis. Hanover F. Ins. Co. v. Harding (Hanover F. Ins. Co. v. Carr), 272 U. S. 494, 510, 511, 71 L. ed. 372, 380, 381, 47 S. Ct. 179, 49 ALR 713; Power Mfg. Co. v. Saunders, 274 U. S. 490, 493, 497, 71 L. ed. 1165, 1167, 1169, 47 S. Ct. 678." *Id.* at 571-72.

The discrimination condemned in *Wheeling Steel* resulted from the lack of any rational basis for the state tax classifications. The Court stated:

> "If on the taxing date one of these petitioners and an Ohio competitor each owns an account receivable of the same amount from the same out-of-state customer for the same kind of commodity, both shipped from a manufacturing plant in Ohio and both sold out of Ohio by an agent having an office out of the State, appellant's account receivable would be subject to Ohio's *ad valorem* tax and the one held by the competing domestic corporation would not. *It seems obvious that appellants are not accorded equal treatment, and the inequality is not because of the slightest difference in Ohio's relation to the decisive transaction, but solely because of the different residence of the owner.*" *Id.* at 572. (Emphasis added.)

In its effort to uphold the tax, Ohio contended that this case was distinguished by a so-called "reciprocity" provision, under which the State of Ohio purported to grant to other states the right to tax the intangibles of Ohio residents who were exempted from the Ohio tax. But this Court said:

> "It is clear that this plan of 'reciprocity' is not one which by credits or otherwise protects the nonresident or foreign corporation against the discriminations apparent in the Ohio statute. We think these discriminations deny appellants equal protection of Ohio law." *Id.* at 574.

In view of its conclusion based on the equal protection clause, the Court found it "inappropriate to decide the Due Process question." *Id.* at 570.

Most recently, the rule was regarded as so well settled that, in noting probable jurisdiction of an appeal from a

State decision upholding such a tax, this Court ordered the case listed on the summary calendar, and then reversed in a *per curiam* memorandum decision, citing the *Wheeling Steel* case: *Reserve Life Insurance Co. v. Bowers,* 379 U. S. 810 (1964), 380 U. S. 258 (1965), *reversing* 175 Ohio St. 468, 196 N. E. 2d 87 (1964).

Unlike the Ohio statute with its "reciprocity" plan, the instant New Jersey statute offers no justification or excuse for its discrimination against foreign corporations. Indeed, the New Jersey Supreme Court made no effort to discuss the applicable decisions by this Court, or to reconcile its decision with them. That court did not mention any of the relevant precedents; it based its decision on the twin presumptions that statutes are constitutional, and that the legislature had a valid classification in mind. It then noted that here, there are

> "*possibilities* for treating foreign nonprofit corporations differently from domestic nonprofit corporations.
>
> "It should be noted that our statute requires not only that the property be used for a specified purpose but also that the owner shall be a nonprofit corporation. The corporation laws of sister states *may* be less exacting than New Jersey with respect to what organizations qualify as nonprofit. If New Jersey were to grant exemptions to foreign nonprofit corporations because the state of incorporation deemed them to be nonprofit in nature, *it may well be* that exemptions would thereby be granted to corporations which, if formed here, would not have a tax exempt status. The Legislature could validly decide that the State should not be *burdened with the administrative problem* of checking the status of foreign corporations under foreign laws and evaluating them with our requirements." (Emphasis supplied.) (A-10).

This suggests a truly novel method of avoiding the requirements of the Equal Protection Clause. If the record in any case may be disregarded, in favor of facts which are invented to support a preconceived theory of reasonable classification, every discrimination is legalized. The court below did not attempt to relate the "possibilities" for different treatment to the facts in the case at bar; it was content to hold merely that in view of the *possibility* such differences might be found *if* the facts *were* ascertained, the State "should not be burdened with the administrative problem . . ." of making the effort to find them.

Obviously, the argument proves too much. If the state court need not consider the facts actually before it, but may instead base its decision on unspecified "possibilities" conjured up by its imaginaiton, the Equal Protection Clause is dead. It is impossible to imagine any discrimination which could not pass such a test. No case can arise which would not be equally susceptible to this approach adopted by the court below.

It has been nowhere suggested that there is in fact any significant difference in this case to justify the present classification; nor could any such suggestion be maintained in view of the undisputed facts. At no stage of the present proceedings has counsel for appellee suggested that appellant's activities fall short in any manner of the traditional concepts of nonprofit organizations contemplated by the statute *; nor, so far as counsel for appellant is aware, was

* In 1967, after the decisions by the Division of Tax Appeals and by the Superior Court, Appellate Division, rejecting appellant's claimed exemption, and while its appeal was pending in the Supreme Court of New Jersey, the New Jersey legislature enacted a statute exempting the property of nonprofit educational television stations, equally applicable to foreign and domestic corporations, which will exempt the property of appellant from property taxes for 1968 and thereafter: Chapter 24 of the New Jersey Laws of 1967, effective April 18, 1967.

such suggestion made by any administrative, legislative or judicial officer of the state.

The court below, *sua sponte,* asked appellant before the case was called for argument to furnish a supplemental statement of fact, to show the extent to which appellant's work conferred a benefit on the people of New Jersey, as compared to other states. This statement demonstrates that there is no significant difference between the benefits generated by appellant's activities for any of the four states within its service area, except insofar as such difference might be related to geographical and population factors; that as to the former, the New Jersey part of appellant's "Grade A" service area represents the larger part of the whole of such area; and that as to the latter an estimated twenty-nine percent of the people within the entire service area of appellant reside within its New Jersey segment (A-47-67).

This request could have presaged an attempt to find a rational basis for the present classification grounded on the distinction made by this Court in *Board of Education of Kentucky Methodist Episcopal Church v. Illinois,* 203 U. S. 553 (1906). There an Illinois statutory exemption from taxation in favor of charitable organizations, for property received by bequest or devise, was limited to domestic nonprofit corporations. The foreign corporation seeking such exemption was legally forbidden to expend any of its funds outside of Kentucky, the state of its incorporation. Mr. Justice McKenna, speaking for this Court, found a rational basis for the Illinois classification in the absence and indeed the impossibility of any benefit to be conferred on the people of Illinois by the work of the Kentucky charity seeking such exemption. But, in this case, the New Jersey legislature did not enact any such classification, and the New Jersey Supreme Court could not find any basis

for such a distinction in view of the compelling statement of benefits to New Jersey which that court requested and received from appellant.

There can be no argument that the situation in this case differs from the pattern of cases such as *Wheeling Steel.* Here, as there, it may be suggested that the State of New Jersey was under no duty to admit appellant. It may be further suggested that when appellant submitted its articles and other documents required for qualification as a nonprofit corporation in New Jersey, the officers of that State might have found, under appropriate statutory or administrative criteria, some theoretical difference in the organization of appellant to justify its exclusion as a corporation in that category. But this Court has clearly and repeatedly held that, once appellant *was* admitted as a corporation in any given class, it was entitled to be taxed in the same manner as New Jersey corporations within the same class. Moreover, in view of the undisputed benefits conferred by appellant on the people of New Jersey, no rational basis for the present classification can be found or even suggested.

It is submitted that the decision by the Supreme Court of New Jersey should not be permitted to stand in the face of the well-settled principles set out in the *Wheeling Steel* line of cases.

CONCLUSION.

The judgment below should be reversed.

Respectfully submitted,

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APPENDIX 1.

OPINION OF SUPREME COURT OF NEW JERSEY

A-94 September Term 1966

Reported at 50 N. J. 6, 231 A. 2d 608 (1967)

WHYY, INC.,

Petitioner-Appellant,

v.

BOROUGH OF GLASSBORO,

Respondent-Respondent,

and

DIVISION OF TAX APPEALS OF THE DEPARTMENT OF THE TREASURY OF THE STATE OF NEW JERSEY,

Respondent.

Argued May 24, 1967. Decided July 5, 1967.

On appeal from the Superior Court, Appellate Division, whose opinion is reported in 91 *N. J. Super.* 269 (1966).

Mr. Grover C. Richman, Jr. argued the cause for petitioner-appellant (*Mr. Frank J. Ferry* and *Messrs. Richman, Berry & Ferren,* attorneys).

Mr. John W. Trimble argued the cause for respondent-respondent.

Mr. Elias Abelson, Deputy Attorney General, filed a statement in lieu of a brief for respondent Division of

Tax Appeals (*Mr. Arthur J. Sills,* Attorney General of New Jersey, attorney).

The opinion of the Court was delivered by

SCHETTINO, *J.*

This is an appeal involving property tax assessments for the year 1964.

WHYY, INC., a nonprofit Pennsylvania corporation authorized to do business in New Jersey, provides recreational and educational radio and television broadcasts in the Delaware Valley area. Its registered office in New Jersey is at 709 Market Street, Camden. The corporation's license precludes all commercial advertising. Consequently, WHYY is dependent upon contributions for its financing. Among its donors are the Board of Education of Philadelphia, the City of Philadelphia, the Tri-State Instruction Council, and others.

The facilities of the corporation in New Jersey, located in the Borough of Glassboro, consist of 50 acres of land, on which are erected a transmittal station and a tower.

WHYY did not apply for a tax exemption pursuant to the procedures set forth in *N. J. S. A.* 54:4-4.4.[1] The radio station did, however, request the Glassboro Council on November 12, 1963 for an exemption from taxes as an educational nonprofit corporation. Prior to this request, by letter dated November 7, 1963 to the Glassboro Council, WHYY forwarded a copy of the corporation's Annual Report and the corporation's charter to demonstrate its nonprofit and educational character.

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1. "Every municipal tax assessor shall, on or before October 1, 1951, obtain from each owner of real property in his taxing district, for which a tax exemption is claimed, an initial statement under oath in such form as shall be prescribed by the Director, Division of Taxation, showing the right to the exemption claimed. Thereafter, and on or before November 1 of each year, said assessor shall obtain an initial statement, if one has not theretofore been filed."

The claim for exemption was denied. WHYY petitioned the Gloucester County Board of Taxation, claiming an exempt status. Again, the claim was denied. WHYY then petitioned the State Division of Tax Appeals, and the claim was there denied. An appeal was taken to the Appellate Division, which affirmed, 91 *N. J. Super.* 269 (1966), holding that WHYY's property, although owned by a nonprofit corporation, was not exempt from New Jersey tax inasmuch as WHYY was not incorporated or organized under the laws of New Jersey as is required by *N. J. S. A.* 54:4-3.6.[2] WHYY thereafter appealed to this Court.

The fundamental approach of our statutes is that ordinarily all property shall bear its just and equal share of the pubic burden of taxation. As the existence of government is a necessity, taxes are demanded and received in order for government to function. Statutes granting exemption from taxation represent a departure and consequently they are most strongly construed against those claiming exemption. The burden of proving a tax-exempt status is upon the claimant. *Bloomfield v. Academy of Med. of N. J.*, 47 *N. J.* 358, 363 (1966); *Pingry Corp. v. Hillside Tp.*, 46 *N. J.* 457, 461 (1966); *Princeton Univ. Press v. Princeton*, 35 *N. J.* 209, 214 (1961).

WHYY argues (1) that if *N. J. S. A.* 54:4-3.6 discriminates against foreign corporations in granting exemptions,

---

2. *N. J. S. A.* 54:4-3.6 encompasses the exemption from taxation of property of certain nonprofit organizations. It reads in pertinent part as follows:

> "The foregoing exemption shall apply only where the association, corporation or institution claiming the exemption owns the property in question and is incorporated or organized under the laws of this State and authorized to carry out the purpose on account of which the exemption is claimed."

Chapter 24 of the Laws of 1967, effective April 18, 1967, supplements *N. J. S. A.* 54:4-3.6 and bears directly on tax exemptions granted to foreign and domestic nonprofit television stations. This new act is "applicable only to taxes payable in 1968 and thereafter." As the litigation here concerns taxes payable for the year 1964, this supplementary act does not apply.

it is unconstitutional and is a violation of the equal protection clause of the Fourteenth Amendment; (2) that because it has qualified to transact business in New Jersey by registering with the Secretary of State, it is in effect organized under the laws of New Jersey within the meaning of *N. J. S. A.* 54:4-3.6 and, thus, is entitled to exemption; and (3) that it would be useless for it to go through the meaningless act of incorporating in this State.

The Borough moved to dismiss the appeal before us, urging that the constitutional issue was not raised prior to the appeal to us and, as the decision by the Appellate Division was unanimous, WHYY has no right to appeal. *R. R.* 1:7-1(c). Secondly, the Borough argues that because WHYY is a foreign corporation which did not organize under the laws of New Jersey within the meaning of *N. J. S. A.* 54:4-3.6, it is not entitled to an exemption. Finally, the Borough argues that the failure by WHYY to comply with *N. J. S. A.* 54:4-4.4 precludes the station from claiming a tax exemption.

I.

This Court may but need not accept a constitutional question not raised below. *Lattieri v. State Board of Medical Examiners,* 24 N. J. 199, 206 (1957). As this constitutional contention is one of great concern to many municipalities and nonprofit foreign corporations, the public interest in this question demands that it be decided. *Cf. Bd. of Ed., E. Brunswick Tp. v. Tp. Council, E. Brunswick,* 48 *N. J.* 94, 109 (1966); *State v. Perricone,* 37 *N. J.* 463, 469, *certiorari* denied 371 *U. S.* 890, 83 *S. Ct.* 189, 9 *L. Ed.* 2*d* 124 (1962).

The Legislature is given wide latitude in classifying for the purposes of taxation. That another classification might be superior or equal to the Legislature's classification is not enough to show that a statute is unconstitutional. As long as the statute may be justified on any reasonable theory, the Legislature's determination will be upheld.

General Electric Co. v. Passaic, 28 *N. J.* 499, 506-10 (1958), appeal dismissed 359 *U. S.* 1006, 79 *S. Ct.* 1146, 3 *L. Ed.* 2*d* 987 (1959).

Moreover, there is a strong presumption that a statute is constitutional, *In re Loch Arbour,* 25 *N. J.* 258, 264-65 (1957), and a legislative act will not be declared void unless its repugnancy to the Constitution is clear beyond a reasonable doubt. *Gangemi v. Berry,* 25 *N. J.* 1, 10 (1957). "To declare a statute unconstitutional is a judicial power to be delicately exercised." *Wilentz v. Hendrickson,* 133 *N. J. Eq.* 447, 487 (*Ch.* 1943, affirmed 135 *N. J. Eq.* 244 (*E. & A.* 1944). It is true that a classification may not be arbitrary, but the burden of proof is on him who asserts an unjust and illegal discrimination. *Wiramal v. Director of Div. of Taxation,* 36 *N. J.* 201, 210 (1961); *Harvey v. Essex County Board of Freeholders,* 30 *N. J.* 381, 388-91, (1959).

As noted above, the Legislature is given considerable latitude in determining classes for purposes of taxation. The Legislature is presumed to have a valid classification in mind. Distinctions will be presumed to rest upon a rational basis if there be any conceivable state of facts which would afford reasonable support for them. *Harvey v. Essex County Board of Freeholders, supra,* 30 *N. J.* at 388-91.

Here, there are possibilities for treating foreign nonprofit corporations differently from domestic nonprofit corporations.

It should be noted that our statute requires not only that the property be used for a specified purpose but also that the owner shall be a nonprofit organization. The corporation laws of sister states may be less exacting than New Jersey with respect to what organizations qualify as nonprofit. If New Jersey were to grant tax exemptions to foreign nonprofit corporations because the state of incorporation deemed them to be nonprofit in nature, it may

well be that exemptions would thereby be granted to corporations which, if formed here, would not have a tax exempt status. The Legislature could validly decide that the State should not be burdened with the administrative problem of checking the status of foreign corporations under foreign laws and evaluating them with our requirements.

We hold that the statute is not unconstitutional.

II.

WHYY seeks to avoid the requirement of *N. J. S. A.* 54:4-3.6, that to be entitled to an exemption a nonprofit corporation must be "incorporated or organized under the laws of this State." WHYY argues that although it is not incorporated under the laws of New Jersey, it is "organized" under our laws because it qualified to transact business here by registering with the Secretary of State. It, therefore, should be entitled to an exemption.

We agree with the Appellate Division interpretation of *N. J. S. A.* 54:4-3.6. The word "incorporated" refers back to nonprofit associations, whereas the word "organized" refers back to nonprofit associations and institutions which may not be "incorporated." Certainly, the word "organized" does not refer to foreign corporations which qualify and register but which are not incorporated in this State. See Appellate Division's opinion, 91 *N. J. Super.* 272.

III.

As WHYY is not entitled to a tax exemption under *N. J. S. A.* 54:4-3.6, it is not necessary for us to determine whether the failure by WHYY to comply with *N. J. S. A.* 54:4-4.4 (notifying the tax assessor before November 1 of a claim to an exemption) should preclude the station from asserting an exempt status.

Affirmed; no costs.

APPENDIX 2.

OPINION OF SUPERIOR COURT OF NEW JERSEY.

Reported at 91 N. J. Super. 269, 219 A. 2d 893 (1966)

Submitted May 16, 1966—Decided May 20, 1966

Before: Judges GOLDMANN, FOLEY and COLLESTER.

MR. FRANK J. FERRY, Attorney for Appellant.

MR. JOHN W. TRIMBLE, Attorney for Respondent, Borough of Glassboro.

MR. ELIAS ABELSON, Deputy Attorney General, filed a statement in lieu of brief for respondent Division of Tax Appeals (MR. ARTHUR J. SILLS, Attorney General, Attorney).

PER CURIAM

WHYY, Inc. appeals from judgments of the Division of Tax Appeals affirming the action of the Gloucester County Tax Board in denying its application for tax exemption of property owned by it in Glassboro. WHYY is a Pennsylvania corporation whose principal office is located in Philadelphia. It was formed as a nonprofit corporation to provide cultural, recreational and educational radio and television broadcasts in the Delaware Valley area, and to establish, construct and otherwise acquire or operate noncommercial, educational radio and television broadcast stations and facilities in Pennsylvania, New Jersey and Delaware. The company is registered in this State as a foreign nonprofit corporation, authorized to do business in New Jersey.

The Federal Communications Commission has licensed WHYY to operate and telecast over Channel 12 as a noncommercial, educational station. It has studios in Philadelphia, Pa. and Wilmington, Del. The facilities in New Jersey consist of 50 acres located in Glassboro, on which are erected a transmittal building and a 1,000-foot guy tower, the heart of its broadcasting system. WHYY is precluded from all commercial advertising. It depends on contributions from school systems and individuals to finance its operations.

The corporation appealed to the Gloucester County Tax Board from assessments levied against its property in Glassboro, claiming tax exemption as a nonprofit and educational institution. The board upheld the assessments. The Division of Tax Appeals affirmed that action upon appeal.

WHYY asserts that as a registered nonprofit foreign corporation it is authorized to own real property in New Jersey, R. S. 14:15-1; that under R. S. 14:15-2 a foreign corporation doing business here is subject to all the benefits as well as burdens of our laws, and for these reasons it is entitled to any exemption a New Jersey corporation might claim. It therefore contends that it should have been granted a tax exemption as an educational and charitable nonprofit corporation by virtue of the provisions of N. J. S. A. 54:4-3.6.

The flaw in this reasoning becomes apparent upon a reading of the statute. After listing the various categories of property entitled to tax exemption, N. J. S. A. 54:4-3.6 concludes with the following language:

> "The following exemptions shall apply only where the association, corporation or institution claiming the exemption owns the property in question *and is incorporated or organized under the laws of this State* and authorized to carry out the purposes on account of which the exemption is claimed." (Italics ours.)

The statutory language is entirely clear, WHYY meets two of its requirements: it owns the property in question and is authorized to carry out the purposes on account of which the exemption is claimed. However, the company is not "incorporated or organized under the laws of this State." Were it not for this, it would meet the criteria of N. J. S. A. 54:4-3.6.

Statutes granting exemption from taxation are construed most strongly against the claimant, who bears the burden of proving a tax-exempt status. *Princeton University Press v. Princeton,* 35 N. J. 209, 214 (1961), and cases there cited. WHYY would avoid the very specific requirement of the quoted statute by arguing that although it is not "incorporated" under the laws of New Jersey, it is "organized" under our laws; that being fully qualified to transact business here under R. S. 14:15-2 and subject to all our laws, it should therefore be entitled to tax exemption. The words "incorporated or organized" in the closing sentence of N. J. S. A. 54:4-3.6 refer back to the beginning of that sentence and relate to "association, corporation or institution." The word "organized" refers to associations or institutions that may not be "incorporated"—it certainly does not refer to foreign corporations which are incorporated or organized in another state.

Appellant claims that a strict interpretation of the statute so as to require bona fide, foreign nonprofit corporations to incorporate in New Jersey is unreasonable and has no relation to the expressed objective of the legislation, which is to foster and encourage educational, charitable and cultural endeavors. However, as stated, statutes of exemption from taxation must be strictly construed. If the subjects of exemption are to be enlarged, it is for the Legislature to bestow that privilege, and not the courts.

Affirmed.

APPENDIX 3.

TEXT OF STATUTES.

NEW JERSEY STATUTES ANNOTATED.

TITLE 14, CHAPTER 15-2.

14:15-2. Foreign Corporations Subject to Title.

A foreign corporation doing business in this state shall be subject to the provisions of this title, so far as the same can be applied to foreign corporations.

14:15-3. Copy of Charter and Statement to Be Filed; Certificate of Authority to Do Business.

Every foreign corporation, except banking, insurance, ferry and railroad corporations, transacting any business in this state, shall file in the office of the secretary of state a copy of its charter or certificate of incorporation, attested by its president and secretary, under its corporate seal, and a statement attested in like manner setting forth:

a. The amount of its authorized capital stock and the amount actually issued;

b. The character of the business which it is to transact in this state; and

c. The principal office of the corporation in this state and the name and place of abode of an agent upon whom process against such corporation may be served, which agent shall be a domestic corporation or a natural person of full age actually resident in this state, and the agency shall continue until the substitution, by writing, of another agent.

Thereupon the secretary of state shall issue to the corporation a certificate that it is authorized to transact business in this state, and that the business is such as may be lawfully transacted by corporations of this state, and he shall keep a record of all such certificates issued.

14:15-4. Certificate of Authority to Do Business Prerequisite to Suits on Contracts.

Until such corporation so transacting business in this state shall have obtained such certificate of the secretary of state, it shall not maintain any action in this state upon any contract made by it in this state.

NEW JERSEY STATUTES—TITLE 54, CHAPTER 4-3.6. EXEMPTIONS FROM TAXATION.

54:4-3.6. Exemption of Property of Nonprofit Organizations

The following property shall be exempt from taxation under this chapter: All buildings actually used for colleges, schools, academies or seminaries; all buildings actually used for historical societies, associations or exhibitions, when owned by the State, county or any political subdivision thereof; all buildings actually and exclusively used for public libraries, religious worship or asylum or schools for feeble-minded or idiotic persons and children; all buildings used exclusively by any association or corporation formed for the purpose and actually engaged in the work of preventing cruelty to animals; all buildings actually and exclusively used and owned by volunteer first-aid squads, which squads are or shall be incorporated as associations not for pecuniary profit; all buildings actually and exclusively used in the work of associations and corporations organized exclusively for the moral and mental im-

provement of men, women and children, or for religious, charitable or hospital purposes, or for one or more such purposes; all buildings owned or held by an association or corporation created for the purpose of holding the title to such buildings as are actually and exclusively used in the work of 2 or more associations or corporations organized exclusively for the moral and mental improvement of men, women and children; all buildings owned by a corporation created under or otherwise subject to the provisions of Title 15 of the Revised Statutes and actually and exclusively used in the work of one or more associations or corporations organized exclusively for charitable or religious purposes, which associations or corporations may or may not pay rent for the use of the premises or the portions of the premises used by them; the building actually occupied as a parsonage by the officiating clergymen of any religious corporation of this State, to an amount not exceeding $5,000.00; the land whereon any of the buildings hereinbefore mentioned are erected, and which may be necessary for the fair enjoyment thereof, and which is devoted to the purposes above mentioned and to no other purpose and does not exceed 5 acres in extent; the furniture and personal property in said buildings if used in and devoted to the purposes above mentioned; all property owned and used by any non-profit corporation in connection with its curriculum, work, care, treatment and study of feeble-minded, mentally retarded, or idiotic men, women, or children shall also be exempt from taxation, provided that such corporation conducts and maintains research or professional training facilities for the care and training of feeble-minded, mentally retarded, or idiotic men, women, or children; provided, in case of all the foregoing, the buildings, or the lands on which they stand, or the associations, corporations or institutions using and occupying them as aforesaid, are not conducted for profit, except

that the exemption of the buildings and lands used for charitable, benevolent or religious purposes shall extend to cases where the charitable, benevolent or religious work therein carried on is supported partly by fees and charges received from or on behalf of beneficiaries using or occupying the buildings; provided, the building is wholly controlled by and the entire income therefrom is used for said charitable, benevolent or religious purposes. The foregoing exemptions shall apply only where the association, corporation or institution claiming the exemption owns the property in question and is incorporated or organized under the laws of this State and authorized to carry out the purposes on account of which the exemption is claimed. As amended L. 1941, c. 243, p. 663, § 1; L. 1949, c. 85, p. 394, § 1; L. 1960, c. 119, p. —, § 1.

APPENDIX 4.

UNITED STATES CONSTITUTION.

AMENDMENT XIV.—CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX 5.

PENNSYLVANIA NONPROFIT CORPORATION LAW.
Title 15 Sections 7001, 7003.

§ 7001.

This act shall be known, and may be cited, as the "Nonprofit Corporation Law."

§ 7003.

A. Except as provided in section 4 of this act, the provisions of this act shall apply to:

(1) Every domestic corporation not for profit incorporated under any general or special act since October 13, 1857; and

(2) Every domestic corporation not for profit incorporated under any general or special act prior to October 14, 1857, which (i) by the terms of its charter or the act under which it was incorporated, holds a charter subject to alteration or revocation, or (ii) accepts or has since October 13, 1857, accepted the Constitution of Pennsylvania in any manner whatsoever.

B. (1) Except as provided in section 4 of this act, every domestic corporation not for profit which is not brought within the scope of this act by subsection A of this section, shall after January 1, 1967, be conclusively deemed to exist under and shall be governed by the provisions of this act, unless on or before January 1, 1967, such corporation shall have filed with the Department of State a certificate declining to accept the provisions of the Constitution of Pennsylvania and of this act. The certificate shall be executed under the seal of the corporation, shall be signed by two duly authorized officers of the corporation, and shall set forth:

(i) The name and address of the corporation,

(ii) The act of Assembly by or under which it was incorporated,

(iii) A statement that the corporation declines to accept the Constitution of Pennsylvania and the provisions of this act, and

(iv) A statement that the nonacceptance of the Constitution of Pennsylvania and of the provisions of this act was duly authorized at a special meeting of the members called for that purpose or at an annual meeting of the members.

No fee shall be charged for the filing of such a certificate.

(2) The names of all corporations filing such certificates shall be listed on a register maintained for that purpose by the Department of State. Such register shall be combined with any similar register established by any other act. Whenever any corporation named on such register shall file any other document under this act or do any other act amounting to acceptance of the Constitution of Pennsylvania, the department shall remove such corporation's name from the register. The acceptance for filing of such a certificate shall not preclude the Commonwealth or any interested person from directly or collaterally establishing, in any proceeding to which the corporation is a party, that such acceptance for filing was improper.

(3) Whenever the Department of State shall reject a certificate tendered for filing under this subsection B on the ground that the corporation named therein has theretofore accepted the Constitution of Pennsylvania, or shall remove a corporation's name from such register, on the

ground either that such corporation was improperly included thereon or that it has accepted the Constitution of Pennsylvania, it shall notify the corporation thereof by certified mail and such notice shall be accompanied by a brief statement by the department of its finding as to the manner in which acceptance of the Constitution was effected.

(4) The filing of a certificate of nonacceptance under this subsection shall be deemed to be in compliance with the police power of the Commonwealth and shall not of itself constitute acceptance of the Constitution of Pennsylvania.

C. Except as provided in section 4 of this act, every foreign corporation not for profit shall be subject to the provisions of this act. If a foreign corporation not for profit is on January 1, 1966, admitted to do business in this Commonwealth by the filing of a power of attorney and statement under the act of June 8, 1911 (P. L. 710), such power of attorney and statement shall be deemed an approved application for a certificate of authority issued under this act, and such corporation shall be deemed a holder of such a certificate. Such corporation shall include in its initial application, if any, for an amended certificate of authority under this act the information required by this act to be set forth in an application for a certificate of authority.

D. Except as provided in this section, this act shall not be construed as attempting to deprive any existing corporation of any corporate power, right, privilege or franchise which such corporation now enjoys. A corporation not for profit shall not hereafter operate in any manner resulting in pecuniary profit or gain to its members.

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SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

October Term, 1967

No. [redacted] 10

WHYY, INC., *Appellant*,

v.

BOROUGH OF GLASSBORO

and

DIVISION OF TAX APPEALS OF THE DEPARTMENT OF THE TREASURY OF THE STATE OF NEW JERSEY,

Appellees

On Appeal From the Supreme Court of New Jersey

REPLY BRIEF FOR APPELLANT

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THE LEGAL INTELLIGENCER, 10 S. 37TH ST., PHILA. 19104

IN THE

Supreme Court of the United States

October Term, 1967

No. 824

WHYY, INC., *Appellant*,

v.

BOROUGH OF GLASSBORO
and
DIVISION OF TAX APPEALS OF THE DEPARTMENT OF THE TREASURY OF THE STATE OF NEW JERSEY,
Appellees

On Appeal From the Supreme Court of New Jersey

REPLY BRIEF FOR APPELLANT

1. The Supreme Court of New Jersey expressly considered and rejected the federal constitutional challenge to the validity of the state statute[1] here involved. That court said "As this constitutional contention is one of great concern to many municipalities and nonprofit foreign corporations, the public interest in this question demands that it be decided." (A-9). This Court has frequently noted that

[1] The statements concerning the alleged taxing problems of the Borough of Glassboro, appearing on pages 6-7 of Appellee's Brief, involve matters which are outside the record and immaterial in any event. Ordinances of political subdivisions of states must also meet the equal protection requirements of the Fourteenth Amendment. *Independent Warehouses v. Scheele*, 331 U. S. 70, 79 (1947); *Jamison v. Texas*, 318 U. S. 413, 414 (1943); *King Mfg. Co. v. City Council of Augusta*, 277 U. S. 100 (1928).

a litigant's right to appeal cannot be questioned under such circumstances. *Raley v. Ohio*, 360 U. S. 423, 436 (1959); *Home Ins. Co. v. Dick*, 281 U. S. 397, 407 (1930); *Whitney v. California*, 274 U. S. 357, 360-61 (1927).

2. Appellant furnished to the State of New Jersey all the information required in order to qualify for admission to New Jersey and to operate there as a nonprofit corporation, and would have furnished any other information upon request. The New Jersey courts have no right to deny appellant's right to equal protection of the law by intimating that, had the legislature required more information, it might also have denied tax exemption in some circumstances. The actual facts are that appellant complied with all New Jersey requirements; was admitted to New Jersey as a non-profit corporation; and was denied the tax exemption solely because incorporated in Pennsylvania and not in New Jersey. Many decisions of this Court, including *Wheeling Steel Corporation v. Glander*, 337 U. S. 562 (1949), prohibit such action by any state.

Respectfully submitted,

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SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1968

No. 10

WHYY, INC.,

Appellant,

v.

BOROUGH OF GLASSBORO

and

DIVISION OF TAX APPEALS OF THE DEPARTMENT OF THE TREASURY OF THE STATE OF NEW JERSEY,

Appellees.

On Appeal from the Supreme Court of New Jersey.

BRIEF FOR APPELLEE, BOROUGH OF GLASSBORO.

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INDEX

	PAGE
Questions Presented	1
Statement of Facts	2
Summary of Argument	2
Argument	3
I. This Court should not accept an appeal based on an infringement of a constitutional right unless it was seasonably raised	3
II. The State of New Jersey has a right to require certain requisites of a corporation before it declares it exempt from taxes	5
Conclusion	7

TABLE OF CITATIONS

CASES:

Baltic Min. Co. v. Massachusetts, 231 U. S. 68 (1913)	6
Ducat v. Chicago, 10 Wall. 410 (1871)	6
Lettieu v. State Board of Medical Examiners, 24 N. J. 199, 206 A. 2d 518 (1957)	4
Liverpool & L. Life & F. Ins. Co. v. Massachusetts, 10 Wall. 566 (1870)	6
Louisville, etc. R. Co. v. Smith, 204 U. S. 551 (1906)	5
Paul v. Virginia, 8 Wall. 168 (1869)	6
Pembina Consol. Silver Min. & Mill. Co. v. Pennsylvania, 125 U. S. 181 (1888)	6

PAGE

Radio Station WOW v. Johnson, 326 U. S. 120 (1945) 4

Railroad Express Agency, Inc. v. Commonwealth of Virginia, 282 U. S. 440 (1931) 7

Spies v. Illinois, 123 U. S. 131 (1887) 4

Thomas v. Iowa, 209 U. S. 258 (1907) 5

Western U. Teleg. Co. v. Frear, 241 U. S. 329 (1914) 6

Wheeling Steel Corp. v. Glander, 337 U. S. 562 (1949) 5, 7

STATUTE:

New Jersey Statutes Annotated 54.4-3.6 3

QUESTIONS PRESENTED.

I. Whether the Supreme Court of the United States should hear an appeal where the Federal Question was initially raised before the New Jersey Supreme Court.

II. Whether the Supreme Court of New Jersey has denied appellant equal protection of the laws by requiring it to incorporate in New Jersey to receive a tax exemption.

STATEMENT OF FACTS.

In addition to the facts set forth in the Appellant's brief, the Borough of Glassboro would like to add the following:

The Borough presently has 20% of its total land area exempt from taxes due to functions of the State of New Jersey presently located within its boundaries. The tax rate on the remaining properties is the highest in Gloucester County. The appellant never filed a form for exemption with the tax assessor as required by New Jersey law.

SUMMARY OF ARGUMENT.

The appellant never raised the federal issue until it attempted to be heard in the New Jersey Supreme Court. The New Jersey Supreme Court recognized this but felt the issue was of public importance and heard the appellant notwithstanding there was no grounds for appeal. This Court has uniformly denied an appeal if the appellant did not raise the federal question at the earliest possible moment in the litigation. This appellant argued the statutory construction of the state statute until it reached the New Jersey Supreme Court when the federal issue first appeared.

New Jersey has a right to require one seeking an exemption to taxes, when the physical assets are located in New Jersey, to become domesticated. Only in that way could New Jersey be sure the exemption is being uniformly granted; other jurisdictions might have more lenient grounds for granting an exemption which wouldn't apply in New Jersey, thereby placing the burden of examining the exempt criteria of a foreign jurisdiction on the local tax assessor.

ARGUMENT.

I. This Court should not accept an appeal based on an infringement of a constitutional right unless it was seasonably raised.

After the exemption was denied by the Borough, the appellant appealed to the Gloucester County Board of Taxation, an administrative body (Appellant's Appendix "C" pages A-19-22). The appellant did not raise any constitutional right but simply claimed a tax exemption as a non-profit and educational institution.

Following an adverse decision the appellant appealed to the New Jersey Division of Tax Appeals. Once again the appellant failed to raise any constitutional right (Appellant's Appendix "C" pages A-24-30). This appeal was heard before Anthony H. Lario, President of the Division of Tax Appeals and is heard as a trial de novo. The opinion of the Court is set forth in appellant's appendix "C" pages A-33-37. The sole argument of the appellant was in the statutory construction of N. J. S. A. 54:4-3.6.

Following an adverse decision the appellant filed an appeal with the Appellate Division of the Superior Court. Once again, the appellant failed to raise any constitutional argument. The two questions presented by the appellant in his Appellate Division Brief were:

1. "Is a non-profit corporation organized to provide cultural recreational, and educational radio and television broadcasts, entitled to a tax exemption on its real property in the State of New Jersey."

2. "Is a foreign, non-profit corporation, organized under the laws of the State of New Jersey, entitled to a tax exemption."

The only mention of a constitutional issue is found on page 6 of the Appellant's Brief where it is argued:

> "In light of the above requirements, it is our position that the petitioner is fully subject to legal process under the laws of the State of New Jersey, as if it were originally incorporated in the State of New Jersey, and is, therefore, equally entitled to any exemption under the constitutional provision of equal protection."

The Borough moved to dismiss the appellant's appeal to the New Jersey Supreme Court for failure to raise a constitutional issue prior to that time. (The Appellate Division's decision was unanimous thereby leaving the appellant without a ground for appeal. New Jersey Supreme Court Rules require a constitutional issue be raised if the appellate court is unanimous.) The New Jersey Supreme Court said:

> "This Court may but need not accept a constitutional question not raised below. *Lettieu v. State Board of Medical Examiners*, 24 N. J. 199, 206, 131 A. 2d 518 (1957). As this constitutional contention is one of great concern to many municipalities and non-profit foreign corporations, the public interest in this question demands that it be decided" (App. 1, p. 20).

It is clear that the New Jersey Supreme Court agreed with the Borough's contention that a constitutional issue had not been raised prior to the appeal to that Court. However, the Court felt the problem of such public concern to waive the rule.

This Court has repeatedly denied appeals which did not seasonably raise the Federal question. *Spies v. Illinois*, 8 S. Ct. 21, 123 U. S. 131, 31 L. Ed. 80 (1887); *Radio Station WOW v. Johnson*, 65 S. Ct. 1475, 326 U. S. 120, 89 L. Ed. 2092 (1945).

As was stated by this Court in *Thomas v. Iowa,* 28 S. Ct. 487, 209 U. S. 258, 52 L. Ed. 782 (1907):

> "A mere claim in the Court below that there has been a denial of due process of law does not of itself raise a federal question with sufficient distinction to give us jurisdiction to consider whether that has been a violation of the Fourteenth Amendment of the Constitution."

And in *Louisville, etc. R. Co. v. Smith,* 27 S. Ct. 401, 204 U. S. 551, 51 L. Ed. 612 (1906), this Court said:

> "If a party relies upon a federal right, he must specially set it up, and a denial of liability under the law is not a compliance with that requirement."

It is clear that the appellant first raised the Federal question when it appealed to the New Jeresey Supreme Court. This is not in compliance with the prior stated Federal cases, and therefore, not seasonably raised.

II. The State of New Jersey has a right to require certain requisites of a corporation before it declares it exempt from taxes.

WHYY, Inc. relies on the case of *Wheeling Steel Corp. v. Glander,* 337 U. S. 562 (1949). The rule in that case is not apposite to the case at bar. The *Wheeling* case dealt with corporations for profit which were maintaining businesses in the State of Ohio. That case deals with the ability of a state to tax a foreign profit corporation on its personal property (much of which were intangibles).

The case at bar deals with a state granting an exemption from taxes. New Jersey allows such an exemption only if a corporation is both non-profit and incorporated in New

Jersey. The right, in general, of a state to make discriminations in matters of taxes and license fees, in favor of domestic and against foreign corporations, or at least to make separate classifications for this purpose, a condition of admission for foreign corporations to do business in the state is supported by many authorities. *Paul v. Virginia* (1869), 8 Wall. 168, 19 L. Ed. 357; *Liverpool & L. Life & F. Ins. Co. v. Massachusetts* (1870), 10 Wall. 566, 19 L. Ed. 1029; *Ducat v. Chicago* (1871), 10 Wall. 410, 19 L. Ed. 972; *Pembina Consol. Silver Min. & Mill. Co. v. Pennsylvania* (1888), 125 U. S. 181, 31 L. Ed. 650, 8 Sup. Ct. Rep. 737; *Baltic Min. Co. v. Massachusetts* (1913), 231 U. S. 68, 58 L. Ed. 127, 34 Sup. Ct. Rep. 15, affirming (1911), 207 Mass. 381, 93 N. E. 831 and 212 Mass. 35, 98 N. E. 1056; *Western U. Teleg. Co. v. Frear* (1914), 216 Fed. 199, affirmed in (1916), 214 U. S. 329, 60 L. Ed. 1027, 36 Sup. Ct. Rep. 563.

The case at bar deals with an exemption or the complete absence of taxes. A fortiori, a state should be able to discriminate or at least set forth the criteria under which a foreign corporation is entitled to a "free ride" while doing business in New Jersey. This exemption takes on added significance under the factual situation since Glassboro already has 20% of its land area tax free and consequently sustains the highest tax rate in the county.

The New Jersey Supreme Court recognized the problems which might arise if foreign non-profit corporations were to establish New Jersey as their home base when it stated at page 21 in appellant's Appendix 1:

> "The corporation laws of sister states may be less exacting than New Jersey with respect to what organizations qualify as non-profit corporations because the state of incorporation deemed them to be non-profit in nature, it may well be that exemptions would thereby be granted to corporations which, if formed here, would not have a tax exempt status. The legis-

lature could validly decide that the State should not be burdened with the administrative problem of checking the status of foreign corporations under foreign laws and evaluating them with our requirements".

It should be noted that the case at bar differs from the rule set forth in the *Wheeling Steel* case inasmuch as it is not the State of New Jersey that is taxing the Appellant, but the Borough of Glassboro which is maintaining municipal services for the Appellant. The Borough of Glassboro, under the tax structure in New Jersey, must raise its own funds from local real estate and personal property taxes to pay for the cost of its municipal services which the Appellant is demanding for free.

The requirement that a foreign corporation become domesticated in order to do business is not a novel idea. This Court held in *Railway Express Agency, Inc. v. Commonwealth of Virginia*, 282 U. S. 440, 51 S. Ct. 201, 75 L. Ed. 450 (1931), that such a requirement was valid even though the plaintiff argued that it would lose its diversity status and thereby the use of the Federal Courts.

It is submitted that the decision of the New Jersey Supreme Court should be affirmed.

CONCLUSION.

The judgment below should be affirmed.

Respectfully submitted,

JOHN W. TRIMBLE,
Attorney for Appellee, Borough of Glassboro.

SUPREME COURT OF THE UNITED STATES

No. 10.—October Term, 1968.

Whyy, Inc., Appellant, *v.* Borough of Glassboro et al.	On Appeal From the Supreme Court of New Jersey.

[November 12, 1968.]

Per Curiam:

The appellant is a nonprofit corporation organized under the laws of Pennsylvania. Under a license issued by the Federal Communications Commission, it operates a noncommercial television station which broadcasts cultural, recreational, and educational programs. The broadcasting facilities for one of the television channels allocated to the appellant are in New Jersey; on its 50-acre plot in the Borough of Glassboro in that State appellant has erected a transmittal station and a tower. Signals on this channel reach approximately 8,000,000 people in the Delaware Valley area, of whom 29.5% are estimated to live in New Jersey. Some of the programs are designed to appeal especially to the residents of New Jersey. In accordance with New Jersey law, the appellant has registered and qualified to transact business in the State.[1]

In November of 1963 the appellant wrote to the Glassboro Council requesting exemption, as a nonprofit organization, from state real and personal property taxes on its land and facilities for 1964. The request was

[1] N. J. Stat. Ann. 14:15–2 requires foreign corporations, in order to obtain a certificate of authorization to transact business in the State, to file with the Secretary of State a copy of its charter and a statement setting forth the amounts of its authorized and issued capital stock, the character of the business to be transacted in the State, the place of the principal office within the State, and the name of a resident agent for the service of process.

denied, as was a similar petition to the Gloucester County Tax Board. The Division of Tax Appeals upheld the County Board, and the appellant took a further appeal to the Superior Court. That court held that while the appellant qualified for the exemption in all other respects, the statute exempted only those nonprofit corporations which were incorporated in New Jersey.[2] 91 N. J. Super. 269, 219 A. 2d 893. On appeal to the Supreme Court of New Jersey, the appellant argued for the first time that the statute denied it equal protection of the laws in violation of the Fourteenth Amendment to the Constitution by discriminating against it solely on the basis of its foreign incorporation. The Supreme Court noted that it had discretion not to consider a question not raised in the lower court, but nevertheless proceeded to decide the the constitutional question because of its widespread importance. It concluded that the classification was not wholly irrational and sustained the denial of exemption.[3] 50 N. J. 6, 231

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[2] N. J. Stat. Ann. 54:4–3.6 provides in pertinent part that the "exemptions shall apply only where the association, corporation or institution claiming the exemption owns the property in question and is incorporated or organized under the laws of this State and authorized to carry out the purposes on account of which the exemption is claimed."

By Chapter 24 of the Laws of 1967, N. J. Stat. Ann. 54:4–3.6a was added. It provides an exemption for the following property: "All buildings and structures located in this State and used exclusively by a nonprofit association or corporation organized under the laws of this or another State for the production and broadcasting of educational television; the land whereon the buildings and structures are erected and which may be necessary for the fair enjoyment thereof, and which is devoted to the foregoing purpose, and no other purpose, and does not exceed 30 acres in extent; the furniture, equipment and personal property in said buildings and structures if used and devoted to the foregoing purpose." The amendment applies only "to taxes payable in 1968 and thereafter."

[3] Because it concluded that the appellant was not entitled to an exemption in any event, the New Jersey Supreme Court noted that

A. 2d 608. We noted probable jurisdiction to consider the constitutional question thus raised. 390 U. S. 979. Cf. *Raley* v. *Ohio*, 360 U. S. 423, 436.

This Court has consistently held that while a State may impose conditions on the entry of foreign corporations to do business in the State, once it has permitted them to enter, "the adopted corporations are entitled to equal protection with the state's own progeny, at least to the extent that their property is entitled to an equally favorable *ad valorem* tax basis." *Wheeling Steel Corp.* v. *Glander*, 337 U. S. 562, 571–572. See *Reserve Life Ins. Co.* v. *Bowers*, 380 U. S. 258; *Hanover Fire Ins. Co.* v. *Harding*, 272 U. S. 494; *Southern Railway Co.* v. *Greene*, 216 U. S. 400. Yet New Jersey has denied the appellant a tax exemption which it accords other nonprofit corporations solely because of the appellant's foreign incorporation. This is not a case in which the exemption was withheld by reason of the foreign corporation's failure or inability to benefit the State in the same measure as do domestic nonprofit corporations. Compare *Board of Education* v. *Illinois*, 203 U. S. 553. Nor has the appellee advanced any other distinction between this appellant and domestic nonprofit corporations which would justify the inequality of treatment.

The New Jersey Supreme Court concluded that the legislative purpose could reasonably have been to avoid the administrative burden which the taxing authorities would bear if they had to examine the laws of other jurisdictions in order to determine whether a corporation with nonprofit status under those laws would also satisfy New Jersey requirements. But this burden would exist

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it did not have to decide whether the failure of the appellant to comply with the normal procedure for claiming an exemption under N. J. Stat. Ann. 54:4–4.4 should preclude it from asserting an exempt status.

only if a foreign corporation sought exemption in New Jersey on the basis of its nonprofit status at home. It is one thing for a State to avoid this extra burden by refusing to grant such an automatic exemption. It is quite another to deny a foreign corporation an opportunity equivalent to that of a domestic corporation to demonstrate that it meets the requirements for a nonprofit corporation under local law. Neither the New Jersey Supreme Court nor the appellee has suggested that there is any greater administrative burden in evaluating a foreign than a domestic corporation under New Jersey law. We must therefore conclude, as we did in *Wheeling*, that the appellant has not been "accorded equal treatment, and the inequality is not because of the slightest difference in [New Jersey's] relation to the decisive transaction, but solely because of the different residence of the owner." 337 U. S., at 572.

The judgment of the New Jersey Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

MR. JUSTICE BLACK dissents from the reversal of this case and would affirm it.